# United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 75-7497

# Ainited States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-7497

FRIENDS OF THE EARTH, FRIENDS OF THE EARTH NEW YORK BRANCH, NATERAL RESOURCES DEFENSE COUNCIL, INC., SIERRA CLUB, CITIZENS FOR A BETTER NEW YORK, CITIZENS FOR CLEAN AIR, INC., COMMITTEE FOR BETTER TRANSIT, INC., ENVIRONMENTAL ACTION COALITION, INC., LEM VALLEY TRANSPORTATION, ASSOCIATION, INSTITUTE FOR PUBLIC TRANSPORTATION, NYC CLEAN AIR CAMPAIGN, NEW YORK STATE TRANSPORTATION, COUNCIL, NORTH EAST TRANSFORTATION COALITION, WEST VILLAGE COMMITTEE, DAVID SIVE, PAUL DUBRUL,

Plaintiffs-Appellants,

-against-

HUGH CAREY, ABRAHAM BEAME, DAVID L. YUNICH, MICHAEL J. COBB, ALFRED EIGENPREIS, MOSES L. KOVE, ELINOR GUGGENHEIMER, ROBERT A. LOW, MICHAEL LAZAR, JOHN ZUCCOTTI, MORRIS TARSHIS, PAUL O'DWYER, J. OGUGLAS CARROLL, JR., WILLIAM J. RONAN, THEODORE KARAGHEUZOFF, P.E., JAMES MELTON, OGDEN REID, STATE OF NEW YORK, CITY OF NEW YORK, "YEW YORK CITY TRANSIT AUTHORITY,"

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DESTRICT OF NEW YORK

#### JOINT APPENDIX

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t. 76-71	Filed pltffs, attachment to memorandum in support of preliminary	Infuncti	00.	
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t. 24-7h	Filed Memorandum in support of City defts' motion to dismiss or	fr the	01+amat	-
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## DISTRICT COURT OPINION AND ORDER OF JUDGE DUFFY

## DATED AUGUST 28, 1975

3 A

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,

Plaintiffs, :

OPINION AND ORDER

-against-

74 Civ. 4500

HUGH L. CAREY, et al.,

Defendants.

#### APPEARANCES:

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This application for a preliminary injunction involves a needless morass of procedural and practical problems. The instant application is a request in two parts. The first is that I preliminarily enjoin and restrain defendants from increasing the transit fare from 35 cents until such time as the Transportation Control Plan is fully implemented, and secondly, that I preliminarily enforce the Transportation Control Plan for the New York City Metropolitan Area submitted by the State of New York and approved pursuant to \$ 110 of the Clean Air Act, 42 U.S.C. \$ 1857 et seq.

It is necessary to determine each branch of these notions separately, but before doing so it may be of some assistance to the reader to know that this Court, on a prior occasion, denied the second request for relief. See 389 F. Supp. 1394 (S.D.B. 1974).

The grounds for the prior denial of the second breach of relief included the fact that the relevant governmental authorities were in the process of revising the "ransportation Control Plan and a strong suggestion was made in that opinion that the United States Envil a mental Protection Administrator be somehow joined as a party should the necessity for some relief arise in the future.

### 1. The question of the fare increase

In the original complaint and in the original petition, the New York City Transit Authority (hereinafter "NYCTA") was not named in any way, although the Metropolitan Transit Authority (hereinafter MTA") was a named defendant.

the Friends of the Earth (hereinafter "FOE") filed an amended complaint merely adding the NYCLA; the relevant allegations of the amended complaint remained the same.

Upon disclosure that this was to e done, the NYCTA moved to dismiss on the grounds that the 60 day notice required by the statute, 42 U.S.C. § 1875h-2(b) had never been given to it. The notice required by that section was clearly one of statutory and procedural due process.

and apparently statutory notice was given to them. Plaintiffs acque that such statutory and procedural due process is unnecessary to add a new party to the action. Their contention is that the NYCTA and the MTA, which undeniably are totally separate entities, have certain officers and general counsel who are common to each, no such formal notice or a complaint with notice annexed, need be given to the NYCTA.

The is claimed that actual notice was received and that therefore statutory notice should be waived. This argument reminds me of a little dog chasing his tail around a see -- a lot of noise and motion but without going anywhere. As such it is totally fallacious. Standards of fairness and due process do not permit such sophistry not will I permit it in this case.

Section 1957h-2(b) provides in pertinent part:

- "(b) No action may be commenced-
  - under subsection (a) (1) of this section--
  - (A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or
  - (B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right."

To attribute any other meaning to this section would be to torture it all out of proportion.

But the plaintiffs suggest that the opposite conclusion must be reached and cite for their proposition certain dicta in the case of <u>Conservation Society of Southern Vermont</u>, The. v. Secretary of <u>Transportation</u>, 508 F.2d 927 (2d Cir. 1974). There the Court said in construing the Federal Water Pollution Control Act

"Ordinarily, the 60-day notice provisions must be adhered to prior to initiation of suit under the FWPCA. The purpose of the 60-day notice procedure of \$1365 is to provide the Administrator time to lounch governmental enforcement of the FWPCA in lieu of enforcement through private citizens suits. See Sen. Rep.No. 92-414, 92nd Cong., 1st Sess., 79-30 (1971); 1972 U.S.Code Cong. & Admin.News 3668, 3745.

"However, a crabbed construction of § 1365
which would elevate the 60-day rule to the position of an absolute barrier to earlier suit fails
to account for § 1365(e), which preserves all
private rights to sue for relief under any statute
or common law. Moreover, a review of the legislative history of § 1365 and its prototype, § 304
of the Clean Air Act, supports the conclusion that
the provisions for obtaining judicial review set

forth in § 1365 were not intended to eliminate avenues previously available to citizens seeking inforcement of the Act, but were rather intended to provide citizens with an additional remedy. Section 304 of the Clean Air Act, 42 U.S.C.

65 1857h at seq., was the model for the citizensuit provision of the FWPCA, and is substantially identical to § 505 of the FWPCA."

Vermont, Inc. v. Secretary of Transportation, supra is totally distinguishable from this case. In any event, the quoted language is herely dicta and is not controlling on this Court. I am sure that if the matter were squarely presented to the Circuit Court they would obtain the same result as I have.

The plaintiffs also argue that they are not bringing in the NYCTA as a real party, but merely for the purpose
of obtaining an injunction against them on the question of
the face increase. If the injunction is to issue against
the NYCTA, which has the authority and responsibility to
change the face, then it is absolutely clear that it is entitled to the same type of statutory and procedural due
process to which other parties are entitled.

On this ground alone the requested relief must be denied.

But the motion by the NYCTA to dismiss is also grounded on the fact that other than the caption, it is nowhere mentioned in the complaint. While I believe that Rule 8 of the Federal Rules of Civil Procedure requires "... a short and plain statement of the claim showing that the pleader is entitled to relief ...", I am also of the firm conviction that at least a defendant should be notified as to which of its actions give rise to the claim upon which the complaint is based.

Plaintiffs would argue that paragraph 44 of the complaint is ambiguous in that it refers to " . . . the Metropolitan Transit Authority (the Transit Authority) . . . and that the reference to Transit Authority would of necessity include the NYCTA. To my mind this is clearly insufficient and for this reason also the complaint as to the NYCTA must be dismissed for failure to state a cause of action. Cf. Rule 12(b) of the Fed.R.Civ.P.

to whether this Court has subject matter jurisdiction over the fare lacrease. The action is brought pursuant to \$ 304(a)(1) of the Clean Air Act, 42 U.S.C. § 1857h-2(a)(1). The Transportation Control Plan at this point does not contain any language prohibiting a fare increase. FOE cannot seek to gain what might be a landatory end by interpreting into the Transportation Control Plan something which is not

If the Environmental Protection Regional Administrator is serious about the stand taken in the letter to the Court that the fare increase will damage the air quality in the city, then he should have done something about it long ago, rather than to try to informally impose a Monday morning quarterback's view of the situation. Of course, if the Environmental Protection Regional Administrator had joined as a party to this action, perhaps I would be able to get some straight answers rather than to engage in pure speculation.

In any event, there is serious question of economics to which none of the parties have addressed themselves adequately. While it is true that the increase in fare may adversely affect air quality such as to make enforcement of other parts of the Transportation Control Plan inadequate,

No thorough economic analysis of the situation has been presented. Suggestions have been made that the impending bridge tolls into the island of Manhattan be used to subsidize the mass transit system. While the question of bridge tolls is clearly part of the Transportation Control Plan, its actual implementation is brought about by the city's own fiscal plight. To use the bridge tolls in such a way may well be a question of "robbing Peter to pay Paul."

for all of the reasons outlined above, the motion to stay an increase in the face is hereby denied.

# 2. The question of the enforcement of the Transportation Control Plan

At the hearing and argument on the present application, plaintiffs contended that there were no issues of fact concerning the need for the poeliminary injunction to enforce the entire Transportation Control Plan. After that hearing, plaintiffs also filed a motion for summary judgment which will be returnable on September 12, 1975. Defendants have yet to respond to the motion for summary judgment. Such response, as will be shown below, is unnecessary.

To obtain a preliminary injunction without an evidentiary hearing it is necessary that no true issue of fact be involved. See S.E.C. v. Frank, 388 F.2d 486 (2d Cir. 1963). To obtain summary judgment it is similarly recessary that there be no true issue of fact. Doehler 1. Purniture Co. v. United States, 149 F.2d 130 (2d Cir. 1945).

Since the time of the hearing and argument of the instant application, my chambers have been inundated with a plethora of paper emanating from the parties. From these documents it is clear that there exist many true issues of fact which must be resolved in a full evidentiary hearing. For example, the parties seem to agree that there were eight consent orders already entered into between the USEPA and the State. Allegation has been made in one of the many letters received from counsel for plaintiffs that these orders have been violated on numerous occasions since that time. It must be assumed that defendants would disagree with this allegation.

Another example may be found in the fact that the parties have advised that there are other orders presently under negotiation. There is clearly a question of fact as to what these orders might be and at what stage the negotiations are.

And, of course, an evidentiary hearing must be held in order to properly frame any such order for pre-liminary injunction since this Court is without sufficient information as to the claimed violations and the claimed negotiations.

my refor opinion, the question of policy. There I stated that the general policy is that the courts should not grant relief which requires continuous judicial supervision.

Unicon Management Corp. v. Koppers Co., 366 F.2d 199 (2d Cir. 1966). Here, as I have said before, supervision would be of a highly technical nature and in an area where there is already a federal agency charged with the enforcement of the Plan.

ter. In my prior decision I invited the parties to renew their application providing that the Administrator of the UGEPA was joined by February 25, 1975. 389 F. Supp. at 1396. Nothing was done at that time. Indeed, the present application was not brought on until July 30, 1975.

Under the circumstances, rather than have this case live in statistical limbo the action will be dismissed in its entirety unless the plaintiffs within 10 days serve upon the Administrator of the USEPA the proper notice under

Section 42 U.S.C., § 1857h-2, or there is intervention by the Administrator within the same period of time. Should there be a failure in this regard, the defendants can submit a judgment of dismissal on 3 days' notice.

#### The question of public participation in this action

I have received any number of thoughtful and thought-provoking letters from various members of the public concerning this matter. Each and every one of them has been given due consideration. All of them are presently on file with the Clerk of this court. Some letter writers requested oral argument but because of the constraints on the time of this Court, that has been impossible. I do wish to note the appreciation of the Court for the concern and participation of the public in this matter.

### 4. Conclusion

The application to stay the increase in the transit fares is hereby denied. Plaintiffs' motion for summary judgment is hereby denied. The other application by plain-

tiffs is to be handled in accord with the directions contained in this opinion.

IT IS SO ORDERED.

Dated: New York, New York

August 28, 1975.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, FRIENDS OF THE EARTH New York Branch, 72 James Street New York, New York 10014

NATURAL RESOURCES DEFENSE COUNCIL, INC. 15 West 44 Street New York, New York 10036

SIERRA CLUB 50 West 40 Street New York, New York 10018

CITIZENS FOR A BETTER NEW YORK 26 Pierrepont Street Brooklyn, New York 11201

CITIZENS FOR CLEAN AIR, INC. 25 Broad Street, Room 443 New York, New York 10004

COMMITTEE FOR BETTER TRANSIT, INC. 211 East 43 Street New York, New York

ENVIRONMENTAL ACTION COALITION, INC. 235 East 49 Street New York, New York

HARLEM VALLEY TRANSPORTATION ASSOCIATION Millerton, New York 12546

INSTITUTE FOR PUBLIC TRANSPORTATION 211 East 43 Street New York, New York 10017

NYC CLEAN AIR CAMPAIGN 11 West 42 Street New York, New York 10036

NEW YORK STATE TRANSPORTATION COUNCIL Millerton, New York 12546

NORTH EAST TRANSPORTATION COALITION Box 666
Meridian, Connecticut 06450

WEST VILLAGE COMMITTEE 304 West 11 Street New York, New York

DAVID SIVE 425 Park Avenue New York, New York

PAUL DUBRUL, 890 West End Avenue New York, New York,

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AMENDED COMPLAINT
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(KTD)

Plaintiffs,

HUGH CAREY, in his official capacity as Governor of the State of New York Office of the Executive Chambers for the State of New York State Capitol Albany, New York

ABRAHAM BEAME, in his official capacity as Mayor of the City of New York City Hall New York, New York 10007

DAVID I. YUNICH, in his official capacity as Chairman of the Metropolitan Transportation Authority, 1700 Broadway New York, New Yorkk, and as Chairman of the New York City Transit Authority, 370 Jay Street Brooklyn, New York 11201

MICHAEL J. COBB, in his official capacity as Commissioner of the New York City Police Department Police Plaza, New York, New York

ALFRED EISENPREIS, in his official capacity as Administrator of the Economic Development Administration, 225 Broadway, New York, New York

MOSES I. KOVE, in his official capacity as Chairman of the Taxi and Limoucine Commission, 87 Beaver Street, New York, New York

ELINOR GUGGENHEIMER, in her official capacity as Commissioner of the Department of Consumer Affairs, 80 Lafayette Street, New York, New York

ROBERT A. LOW, in his official capacity as Administrator of the New York City Environmental Protection Administration, Municipal Building, New York, New York

MICHAEL LAZAR, in his official capacity as Administrator of the New York City Transportation Administration 40 Worth Street, New York, New York

JOHN ZUCCOTTI, in his official capacity as Chairman of the City Planning Commission, 2 Lafayette Street, New York, New York

MORRIS TARSHIS, in his official capacity as Director of Franchises, Bureau of Franchises, 1307 Municipal Building, New York, New York

PAUL O'DWYER, in his official espacity as President of the New York City Commeil, City Hall Building, New York, New York

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J. DOUGLAS CARROLL, JR., in his official capacity as Executive Director of the Tri-State Regional Planning Commission 100 Church Street, New York, New York

WILLIAM J. RONAN, in his official capacity
as Chairman of the Board of The Port Authority
of New York and New Jersey,
One World Trade Center, New York, New York

THEODORE KARACHEUZOFF, P.E., in his official capacity as Commissioner of the New York City Department of Traffic 28-11 Bridge Plaza North, Long Island City, New York

JAMES MELTON, in his official capacity as Commissioner of New York State Department of Motor Vehicles, South Mall, Albany, New York

OGDEN REID, in his official capacity as Commissioner of the New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York

STATE OF NEW YORK, State Capitol Albany, New York

CITY OF NEW YORK, New York State, City Hall New York, New York

NEW YORK CITY TRANSIT AUTHORITY, 370 Jay Street Brooklyn, New York 11201

Defendants.

#### COMPLAINT

AS AND FOR A CAUSE OF ACTION, Plaintiffs allege as follows:

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#### NATURE OF CLAIM

1. This is an action for injunctive, declaratory and other relief to enforce the New York City Metropolitan Area Air Quality Implementation Plan Transportation Controls for the New York City Metropolitan Area <sup>1</sup>, (hereafter referred to as the "Transportation Control Plan") which was approved pursuant to \$110 of the Clean Air Act <sup>2</sup> as part of the New York State Implementation Plan in June, 1973.

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<sup>1</sup> This is a portion of the New Jersey - New York - Connecticut Interstate Air Quality Control Region for which the State of New York is responsible. See 40 C.F.R. § 81.13.

<sup>2</sup> As amended in 1970, 42 U.S.C. § 1857 et seq., P.L. 91-604, (hereafter referred to as the "Act"); § 110, 42 U.S.C. § 1857C-5.

II.

#### JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to § 304(a)(1) of the Act.<sup>3</sup>

III.

#### NOTICE

3. Notice, as required pursuant to § 304(b) of the Act and applicable regulations, <sup>4</sup> has been given by plaintiffs' letters sent by certified mail on August 6, 1974, to the appropriate persons, including all defendants in this cause of action.

IV.

#### VENUE

4. Venue is properly lodged with this Court, pursuant to the provisions of § 304(c)(1) of the Act.<sup>5</sup>

v.

#### PARTIES

#### Plaintiffs

5. Plaintiffs Friends of the Earth, and Friends of the Earth, New York Chapter (hereafter FOE) is a nonprofit membership corporation organized pursuant to the laws of the State of New York. Its home office is in San Francisco, California and it has regional and principal offices throughout the United States, including its New York City offices at 72 James Street, New York,

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<sup>3/ 42</sup> U.S.C. § 1857h-2(a)(1).

<sup>4/ 42</sup> U.S.C. § 1857h-2(b); 40 C.F.R. 54.

<sup>5/ 42</sup> U.S.C. § 1857h-2(c)(1).

New York. FOE has a national membership of 28,000, over 3,600 of whom reside in the State of New York.

FOE is devoted to the enhancement and preservation of environmental values throughout the United States and to that end carries out research, publishes reports and engages in litigation, among other organizational activities. FOE asserts in this action both its organizational interests and interests of its members in the preservation of environmental values in general and the public health in particular as effected by motor vehicles in metropolitan New York. Furthermore, the rights of FOE's employees and members who live and work in New York to prompt attainment of air quality protective of their health are infringed, and the health of such employees and members is jeopardized by the violations of law by the defendants as alleged below.

6. Plaintiff Natural Resources Defense Council (hereafter NRDC) is a nonprofit membership corporation organized under the laws of the State of New York, with offices at 15 West 44th Street, New York, New York, 1710 N Street, N.W., Washington, D. C., and 664 Hamilton Avenue, Palo Alto, California. NRDC has a national membership of 8,045, including 3,642 residents of metropolitan New York City.

NRDC is a national organization dedicated to the preservation and defense of the human environment and natural resources of the United States. In carrying out these objectives NRDC has undetaken, among other organizational activities, its Project on Clear, a national program to ensure effective federal and State implementation of the Clean Air Act. In this connection, NRDC

published and distributed two detailed manuals for citizen participation in State implementation plan proceedings under the Clean Air Act. NRDC has also submitted analyses of State air quality implementation plans, including New York's, to the Environmental Protection Agency (hereafter "EPA"). Furthermore, NRDC presented testimony in the public hearings held regarding New York's air quality implementation plan.

NRDC asserts in this action both its organizational interests and interests of its members in the preservation of environmental values in general and the public health in particular as affected by motor vehicles in metropolitan New York. Furthermore, the rights of NRDC's employees and members who live and work in New York to prompt attainment of air quality protective of their health are infringed, and the health of such employees and members is jeopardized by the violations of law by the defendants as alleged below.

7. Plaintiff Sierra Club is a nonprofit membership corporation organized pursuant to the laws of the State of New York. Its home office is in San Francisco, California and it has regional, state and local chapters throughout the United States, including its New York City offices at 72 James Street, New York, New York. Sierra Club has a national membership of over 144,000, including 8,000 members in the State of New York.

Sierra Club is dedicated to the enhancement and preservation of environmental values through the United States and to that end carries out research, publishes reports and engages in litigation, among other organizational activities. Sierra Club asserts in this action both its organizational interests and interests of its members in the preservation of environmental

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values in general and the public health in particular as effected by motor vehicles in metropolitan New York. Furthermore, the rights of Sierra Club's employees and members who live and work in New York to prompt attainment of air quality protective of their health are infringed, and the health of such employees and members is jeopardized by the violations of law by the defendants as alleged below.

- 8. Plaintiffs Citizens for a Better New York, Citizens for Clean Air, Inc., Committee for Better Transit, Inc., Environmental Action Coalition, Inc., Harlem Valley Transportation Association, Institute for Public Transportation, NYC Clean Air Campaign, Inc., New York State Transportation Council. North Fact Transportation Coalition, and West Village Committee include regional, state and local organizations within the State of New York whose memberships include persons that live or work in New York City and live within the State of New York. Each of these organizations asserts in this action both its organizational interests and interests of its members in the preservation of environmental values in general and the public health in particular as effected by motor vehicles in metropolitan New Yor Furthermore, the rights of each of the organizational employees and members who live and work in New York to prompt attainment of air quality protective of their health are infringed, and the health of such employees and members is jeopardized by the violations of law by the defendants as alleged below.
- 9. David Sive, 445 Park Avenue, New York, New York, is a citizen of the United States, a resident of New York City and a member of FOE. Mr. Sive shares FOE's commitment to the preservation of environmental values in general and the public health in particular as effected by motor vehicles in metropolit

New York. Living and working in New York City, his rights to prompt attainment of air quality protective of his health are being infringed, and his health is jeopardized by the violations of law by the defendants as alleged below.

10. Plaintiff Paul DuBrul, 890 West End Avenue, New York, New York, is a citizen of the United States and a resident of New York City. Living and working in New York City, Mr. DuBrul's rights to prompt attainment of air quality protective of his health are being infringed, and his health is jeopardized by the violations of law by the defendants as alleged below.

#### Defendants

- 11. Defendant Hugh Carey is the Governor of the State of New York. He is responsible for carrying out each of the measures required by the Transportation Control Plan.
- 12. Defendant Abraham Beame is the Mayor of the City of New York. He is responsible for carrying out measures required by the Transportation Control Plan.
- 13. Defendant David L. Yunich is the Chairman of the Metropolitan Transportation Authority, 1700 Broadway, New York, New York, and the New York City Transit Authority, 370 Jay Street, Brooklyn, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 14. Defendant Michael J. Cobb is the Commissioner of the New York City Police Department, Police Plaza, New York, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 15. Defendant Alfred Eisenpreis is the Administrator of the Economic Development Administration, 225 Broadway, New York, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.

- . 16. Defendant Moses L. Kove is the Chairman of the Taxi and Limousine Commission, 87 Beaver Street, New York, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 17. Defendant Elinor Guggenheimer is the Commissioner of the Department of Consumer Affairs, 80 Lafayette Street, New York, New York. In her official capacity she is responsible for carrying out measures required by the Transportation Control Plan.
- 18. Defendant Robert A. Low is the Administrator of the New York City Environmental Protection Administration,
  Municipal Building, New York, New York. In his official capacity
  he is responsible for carrying out measures required by the
  Transportation Control Plan.
- 19. Defendant Michael Lazar is the Administrator of the New York City Transportation Administration, 40 Worth Street, New York, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 20. Defendant John Zuccotti is the Chairman of the City Planning Commission, 2 Lafayette Street, New York, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 21. Defendant Morris Tarshis is the Director of
  Franchises of the Bureau of Franchises, 1307 Municipal Building,
  New York, New York. In his official capacity he is responsible
  for carrying out measures required by the Transportation Control
  Plan.

- . 22. Defendant Paul O'Dwyer is the President of the New York City Council, City Hall Building, New York, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 23. Defendant J. Douglas Carroll, or. is the Executive Director of the Tri-State Regional Planning Commission, 100 Church Street, New York, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 24. Defendant William J. Ronan is the Chairman of the Board of the Port Authority of New York and New Jersey, One World Trade Center, New York, New York. In his official capacity he is reponsible for carrying out measures required by the Transportation Control Plan.
- 25. Defendant Theodore Karaghenzoff, P.E., is the Commissioner of the New York City Department of Traffic, 28-11 Bridge Plaza North, Long Island City, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 26. Defendant Arnold R. Fisher is the Commissioner of the New York State Department of Motor Vehicles, South Mall, Albany, New York. In his official capacity he is responsible for carrying out measures required by the Transportation Control Plan.
- 27. Defendant James L. Biggane is the Commissioner of the New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York. In his official capacity he is responsible for carrying out measures required by the Transporttion Control Plan.

- 28. Defendant State of New York is the governmental ontity responsible for carrying out each of the measures required by the Transportation Control Plan.
- 29. Defendant City of New York is the governmental entity which shares responsibility with the State of New York for carrying out the measures required by the Transportation Control Plan.

29a. Defendant New York City Transit Authority is a public authority which shares responsibility with the State of New York for carrying out the measures required by the Transportation Control Plan.

#### STATEMENT OF FACTS

Α.

#### e Problem of Air Pollution in New York City

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Hydrocarbons and oxides of nitrogen react in sunlight to produce photochemical oxidents, known more notoriously as smog. This product of vehicle pollution is also present in hazardous amounts in New York City's air.

<sup>&</sup>quot;Mobile air pollutant sources in the metropolitan area account for roughly 95 percent of carbon monoxide emissions, 65 percent of hydrocarbons, 40 percent of nitrogen oxides and 50 percent of photo-hemical smood formed by atmospheric reaction of hydrocarbons and nitrogen oxides. Thus, unhealthy ambient concentrations of these pollutants are directly linked to transportation patterns in the region." Transportation Control Plan, supra, at 1.2.

31. To protect public health the Federal government has, pursuant to the Clean Air Act, identified the concentrations of pollutants in the air which present a hazard to health. The Act requires that each state adopt and carry out a program to reduce air pollution to concentrations less than these levels, known as the primary ambient air quality standards. The primary standards established by the Federal Environmental Protection Agency are as follows:

# Primary Standards

Pollutant	Concentration (parts per million = ppm)
Carbon Monoxide	35 ppm maximum for 1 hour 9 ppm maximum for 8 hours
Photochemical Oxidants	0.08 ppm maximum for 1 ho
Nitrogen Dioxide	0.05 ppm annual arithmetic mean

By contrast, air quality in New York City in 1973 showed pollutant levels are far above the primary standards for carbon monoxide and photochemical exidents:

# Mow York Air Quality (1973)

Pollutant	Concentration (ppm)
Carbon Monoxide	70 ppm 1-hour maximum 49.6 ppm 8-hour maximum
Photochemical Oxidants	0.21 ppm 1-hour maximum
Nitrogen Dioxide	0.051 ppm annual arith- metic mean

<sup>7/ 42</sup>\_U.S.C. § 1857c-4 and c-5. See paragraph 43, below.

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<sup>8/ 40</sup> C.F.R. Part 50. Standards for sulfur dioxide, perticulate matter and hydrocarbons also have been established by the Environmental Protection Agency.

<sup>9/</sup> State of New York, New York City Metropolitan Area Air Quality Implementation Plan Transportation Controls, AIR-P 34, pages 2-15, 2-21, and 2-23. (Proposed Revision, July, 1974).

- . 32. Unhealthy pollution levels in New York are the rule, not the exception. The most comprehensive monitoring of New York's air quality has been carried out in midtown Manhattan. Measurements made during 1973 and 1974 at 12 locations in midtown Manhattan showed that carbon monoxide pollution made the air unhealthy to breathe on 96 days out of the 102 days the pollution levels were monitored. At the corner of 45th Street and Lexington Avenue, a location always crowded with pedestrians, air quality was measured as harmful to health on 265 out of 349 days in 1973, 76% of the time.
- 33. Motor vehicle air pollution is not confined to the streets of Manhattan. A 1970-71 study of carbon monoxide levels inside two Manhattan buildings showed that as a result of traffic outside the air inside was unhealthy to breathe. Inside a commercial building in midtown Manhattan the air was harmful to health nearly 48% of the time during weekdays. In a residential building, the George Washington Bridge Apartments, the air in residents' apartments was harmful up to 20% of the time.

<sup>10/</sup> Id. at p. 2-16, Table 2-2.

<sup>11/</sup> Id., at p.2-15, Table 2-1.

<sup>12/</sup> General Electric Co., Contract No. CPA 70-77 to the Environmental Protection Agency, "Indoor-Outdoor Carbon Monoxide Pollution Study", page 5-159, December 1972.

<sup>13/</sup> Id., at p. 5-3.

34. Substantial adverse health effects are associated with each of the motor vehicle pollutants. Carbon monoxide affects humans by combining with hemoglobin in the blood stream - displacing the supply of oxygen being carried to body tissues. In high concentrations, such as exposure to raw auto exhaust, carbon monoxide's poisoning is rapid and deadly. But even at lower concentrations which are not fatal, carbon monoxide exposure can cause dizziness, headaches, nausea, and general fatigue, impairment of memory, and loss of muscular control. Carbon monoxide can also harm pregnant women and account for small-sized babies. In Los Angeles an increase in death rates occurred on days of highest atmospheric carbon monoxide con-In another Los Angeles study persons with heart conditions showed a marked increase in susceptibility to the painful heart disease, angina pectoris, after driving in freeway traffic for 90 minutes. Photochemical oxidants, when present in atmospheric concentrations equal to or less than those now occurring in New York are associated with increased frequency of asthma attacks and eye irritation. Atmospheric concentrations of nitrogen dioxide have been associated with a greater incidence of acute bronchitis in infants and school children and other acute respiratory disease in adults and children.

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<sup>14/</sup> Waldbott, G.L., Health Effects of Environmental Pollutants, p. 124 (C.V. Mosby Co., St. Louis, 1973).

<sup>15/</sup> Ibid.

<sup>16/</sup> Aronow, W.S., et al., 77 Annals of Internal Medicine 669-676 (1972).

In this study the subjects undertook a second drive but breathed purified air and enjoyed decreased susceptibility to angina pectoris.

<sup>17/</sup> U.S. Dept. of Health, Education, and Welfare, Air Quality Criteria for Photochemical Oxidants, page 9-30 to 9-31 (March 1970).

<sup>18/</sup> U.S. Environmental Protection Agency, Air Quality Criteria for Nitrogen Oxides, pages 11-12 to 11-13 (Jan. 1971).

# New York's Duty to Clean the Air

- 35. In 1970 Congress amended the Clean Air Act to establish a comprehensive and accelerated program to eliminate the harm to public health and welfare caused by air pollution. Federal air pollution control laws had been in effect since 19/1963. However, little had been accomplished by 1970 because the earlier statutes relied on voluntary action by the states which, in most cases, was not forthcoming.
- 36. The 1970 amendments directed the Administrator of the Environmental Protection Agency (EPA) to promulgate ambient air quality standards adequate to protect against harm to public health (pr \_\_ry standards) and welfare (secondards).
- and submit to EPA a comprehensive set of air pollution control laws and regulations, known as an air quality implementation plan, designed to achieve the health-protective primary air quality standards as "expeditiously as practicable". Any state failing to submit an implementation plan would have regulations applicable to the state promulgated by EPA.

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<sup>19/</sup> Clean Air Act of 1963, P.L. 88-206, \_\_\_\_ Stat. .

<sup>20/ &</sup>quot;Air Pollution - 1970", Hearings before the Subcommittee on Air and Water Pollution of the Committee on Public Works, U.S. Senate on S.3229, S.3466, S.3546, March 16, 17, 18, 1970, 91st Cong., 2d Sess., at pp. 125-126 (Remarks of Sen. Randolph).

<sup>21/</sup> Clean Air Act, § 109, 42 U.S.C. § 1857c-4. The Administrator promulgated such standards on April 30, 1971, Fed.Reg. 40 C.F.R. Part 50.

<sup>22/ § 110, 42</sup> U.S.C. § 1857c-5.

<sup>23/</sup> S 110(c), 42 U.S.C. S 1857c-5(c).

- state and federal action to insure that the primary air quality standards would be met no later than four and one-half years after the date of enactment, i.e., by May 31, 1975. State implementation plans were required to be adopted, submitted to EPA, reviewed and deficiencies remedied, with the completed plan in effect not later than July 31, 1972. The plan was required to show attainment of the standards by May 31, 1975 with a limited extension of time for attainment up to May 31, 1977 available where earlier attainment was shown by the Governor to be impossible.
- 39. Implementation plans were required to include, wherever necessary to meet air quality standards, "land-use and transportation controls". However, the Administrator of EPA granted an unauthorized delay of more than a year to the states in the timetable for submitting the transportation and land-use control portions of their plans.

<sup>24/</sup> The schedule established by the Act included the following steps—promulgation of standards by EPA within 120 days after enactment (§ 109); submission of state plans within nine months after promulgation of standards [§ 110(a)(1)]; EPA approval or disapproval of the plans within four months after submission [§ 110(a)(2)]; and EPA promulgation of regulations for inadequate plans within six months after submission date [§ 110(c)].

<sup>25/ § 110(</sup>a)(2)(A); 42 U.S.C. § 1857c-5(a)(2)(A).

<sup>26/ § 110(</sup>e); 42 U.S.C. § 1857c-5(e).

<sup>27/ \$ 110(</sup>a)(2)(B); 42 U.S.C. \$ 1857c-5(a)(2)(B). Transportation controls are defined by EPA as consisting of measures to directly reduce emissions from individual vehicles (engine "tune-up" and installation and maintenance of emission control devices) and measures to reduce the use of automobiles (carpool programs, improvements in public transportation, parking restrictions, etc. 40 C.F.R. \$ 51.1. Congress required such measures to be include in implementation plans in accordance with its finding "that the growth in the amount and complexity of air pollution brought about by...the increasing use of motor vehicles, has resulted in mounting damages to the public health and welfare..." \$ 101, 42 U.S.C. \$ 1857(a)(2).

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- 40. In January, 1973 in response to a petition for review brought by several of the plaintiffs in this action, the United States Court of Appeals for the District of Columbia Circuit held the EPA delay unlawful and ordered the Administrator to complete the plan submission and approval process without further delay. 28
- 41. On April 17, 1973, more than fourteen months after the statutorily prescribed date, defendants submitted New York's Transportation Control Plan for the New York portion of the New York City Metropolitan Air Quality Region.
- 42. On June 22, 1973, EPA's Administrator approved defendant's Transportation Control Plan. 29
- 43. The adopted and apply ved Transportation Control Plan has four levels of strategies for reducing pollutants: primary stage strategies which must be followed in order to achieve the primary air quality standards; 30 maintenance strategies

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<sup>28/</sup> Natural Resources Defense Council v. Environmental Protection Agency, 475 F.2d 968 (D.C. Cir., 1973).

<sup>29/ 38</sup> F.R. 16560-61.

<sup>30/</sup> These strategies, as listed in Governor Rockefeller's letter of submittal to EPA of the N.Y. Transportation Control Plan, with the designation letter and number given to each are: vehicle turmover (A-1); retrofit of heavy duty vehicles powered by gasoling engines (A-2); tri-annual emission inspection at all livery vehicles (A-3); semi-annual heavy duty vehicle emission inspection (A-4); passenger vehicle emission inspection (A-5); mechanic training (A-6); diesel bus maintenance and inspection (A-7); elimination of leaded gasoline in New York metropolitan area (A-9); reciprocal emission control strategies in New Jersey and Connecticut (A-10); "California package" for taxis, 1975 models and later (A-11); strict enforcement of existing traffic regulations in New York City (B-la); traffic management (B-lb); selective ban on taxi cruising (B-1c); reduction in central business district parking (B-3); expanded use of express bus lanes and increased express bus service (B-5); imposition of tolls on East and Harlem River Bridges (B-7); staggering work hours (C-8); after-hours goods delivery (D-4); and citizen participation in planning and implementation (E-4).

COMPTEME

necessary to maintaining air quality after the standards are achieved; contingency strategies that would be activated if  $\frac{31}{}$  primary strategies were inadequate; and secondary strategies that may be beneficial but require further study.

44. Each of the strategies in the Transportation Control Plan consists of a schedule of specific actions to be taken by defendants by identified dates. For example, the schedule for the strategy to expand express bus service and increase the number of bus lanes in New York City was set forth in the plan as follows:

STRATEGY B-5: Increase in Express Bus Service; Exclusive Bus Lanes

	BEGIN	COMPLETE
1. Secure Memorandum of Understanding from the Transportation Administration, the Department of Traffic, the Bureau of Franchises,		
the Metropolitan Trans- portation Authority		
(Transit Authority), and the Department of Transportation suppor-		
ting strategy and agree- ing to provide all necessary assistance in developing and im- plementing strategy,		
by April', 1973.	Feb. 15, '73	Apr. 15, '73
2. Prepare a de- tailed study and im- plementation work plan		
by July, 1973.	July 1,'73	Oct. 1,'73

<sup>31/</sup> The plan's one contingency strategy is the banning of private automobiles from the Manhattan business district (B-2).

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<sup>32/</sup> These schedules are set forth in the Transportation Control Plan at pages B-1 through B-29, and in the "Implementation Schedule, New York City Metropolitan Area Air Quality Implementation Plan Transportation Controls". The latter is annexed hereto as "Attachment A".

 $<sup>\</sup>frac{33}{p.4}$ . As shown in the Table of Requirements Violated, Attachment the first step has been begun but not completed, while no action been taken on the other six steps.

STRATEGY B-5: Increase in Express Bus Service; Exclusive Bus Lanes (Cont'a)

	BEGIN	COMPLETE
<ol> <li>Secure funds (\$500, 0) to develop an express bus master plan by August, 1973.</li> </ol>	Sept. 1,'73	Nov. 1,'73
4. Develop a master plan including equipment requirements, routing proposals, impact analysis, etc. (September, 1973 - February, 1974).	Nov. 1,'73	May 1,'73
5. Secure funds (\$30 million capital; \$15 million annual operating) for implementation, by March, 1974.	May 1,'74	July 1,'74
6. Order necessary equipment (primarily buses) by April, 1974 (new equipment to conform to low emission specifications to be developed as part of Strategy A-7).	July 1,'74	Sept. 1,'74
7. Implement strategy		Dept. 1, 14
(July, 1974 - May, 1975).	July 1, '74	Ongoing

45. Pursuant to 40 C.F.R. § 52.1683 defendants were required to submit to EPA by July 30, 1973, additional legislative authority for carrying out their Transportation Control Plan and were further required to submit to EPA by December 30, 1973, all additional adopted regulations and administrative policies needed to implement each strategy within such Plan.

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The Defendants Have Violated Numerous Requirements of the Transportation Control Plan

- 46. The Transportation Control Plan requires defendants to have initiated 203 actions and to have completed 175 actions by August, 1974. As of the date of the filing of this complaint defendants have taken no action on 168 of these actions, have begun but have failed to complete 26 actions which are required to have been completed already, have taken inadequate action regarding 7 actions and have satisfactorily completed only 7 actions.
- 47. As of the date of the filing of this complaint, defendants have not submitted to EPA their legislative authority for carrying out their Transportation Control Plan nor have they submitted the required regulations and administrative policies, as required by 40 C.F.R. § 52.1683.
- the Transportation Control Plan, carbon monoxide pollution levels are rising throughout New York City, becoming more, rather than less, hazardous to health. A recently published report by New York City's Department of Air Resources (annexed hereto as "Attachment C") indicates that violations of the 8-hour carbon monoxide standard increased by 200% from 1972 to 1973 at the City's eleven "Background stations" -- monitoring locations which presumably reflect levels reached all over the City. The report reflects that the trend of annual carbon monoxide averages increased more than 5% from 1972 to 1973 in Midtown Manhattan and by 10% at the "background" monitoring locations.

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<sup>34/</sup> See, "Table of Requirements Violated" annexed hereto as "Attachment B" and the Affidavit of Brian T. Ketcham, P.B., annexed hereto as "Attachment D".

#### VII

## FIRST CAUSE OF ACTION

- 49. Plaintiffs reallege all allegations contained in paragraphs 1 through 48 above.
- 50. Defendants are in violation of emission standards or limitations under the Clean Air Act, in that they have violated the schedules in effect under the Transportation Control Plan by failing to take the actions required by such schedules as set forth in "Attachment A".

### VIII .

## SECOND CAUSE OF ACTION

- 51. Plaintiffs reallege all allegations contained in paragraphs 1 through 48 above.
- 52. Defendants are in violation of the requirements of 40 C.F.R. § 52.1683 by failing to submit to EPA (1) their legislative authority for carrying out the Transportation Control Plan by July 30, 1973, and (2) all adopted regulations and administrative policies needed to implement each strategy within the Plan by December 30, 1973.

### IX

### RELIEF REQUESTED

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Wherefore, plaintiffs pray under their First and Second causes of action above, that this Court grant injunctive, declaratory, and other relief as follows:

1. That the defendants are in violation of their Transportation Control Plan's implementation schedule as approved on June 22, 1973 by the Administrator of EPA;

- 2. That the defendants are in violation of the lawful regulations prescribed by the Administrator of EPA at 40 C.F.R. § 52.1683;
- 3. That defendants, their agents, servants, employees, attorneys, and all other persons in contact and participation with them:
  - (a) be directed to forthwith implement the schedules of specific actions required by each of the strategies in their Transportation Control on a Court-ordered timetable accelerated from the original;
  - (b) be directed to comply within 60 days with 40 C.F.R. § 52.1683;
  - (c) be directed to submit to this Court, by Affidavit or Certification, and on or before the dates by which each action is required to be begun, as set forth in the Court-approved Schedule for the Transportation Control Plan, a statement for each action describing in detail the actions taken by defendants to comply with the required action; and
  - (d) be directed to submit to this Court,
    by Affidavit or Certificate, and on or before
    the dates by which each action is required
    to be completed, as set forth in the Courtapproved Schedule for the Transportation

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Control Plan, a statement for each and action describing in detail the actions taken by defendants to comply with the required action.

- That the Court retain jurisdiction of this action to assure compliance with the judgment of this Court;
- 5. That defendants comply in all other respects with the applicable provisions of the Clean Air Act, as amended, and the rules and regulations adopted pursuant thereto;
- 6. That plaintiffs be awarded the costs of this action, including reasonable attorney and expert witness fees, pursuant to §304(d) of the Act, 42 U.S.C. §1857h-2(d);
- 7. That plaintiffs be awarded such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Clifton E. Curtis

Anthony Z. Roisman Berlin, Roisman, Kessler & Cashdan 1712 N Street, N.W. Washington, D.C. 20036

(212) 833-9070

David Schoenbrod David Hawkins

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Ross Sandle Natural Resources Defense Council 15 West 44 Street New York, New York 10036 (212) 869-0150

ENTER ENTERNORMEN AREA
AND QUALITY INTERESTATION PLANT
TRANSPORTATION CONTROLS

ATTACHMENT A

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NEW YORK CITY DEPARTMENT OF AIR RESOURCES

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NEW YORK CITY TRANSPORTATION CONTROL PLAN: TABLE OF REQUIREMENTS VIOLATED

ATTACHMENT B

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1.		ORIGINAL PLAN SCHEDULE	SCHEDULE	STATUS
ri	Prepare analyses of implementation and planning staff requirements.		April 1,'73	Completed
ci	Secure community from City and State to fund and hire staff.	Apr. 1,'73	June 1,'73	No action taken
(·)	Submit requests for staff expansion.	June 1,'73	July 1,'73	Completed
• • • • • • • • • • • • • • • • • • • •	mire all personnel or consultants.	July 1,'73	Aug. 1,'73	No action taken
10	Design and build comprehensive data base and monitoring system.	May 1,'73	May 1,'74	No action taken
9	initiate inplementation.	Feb. 15,'73	Ongoing	Action inadequate

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6,	TEATEST A-2: Actrofit of Hoavy Ducy Vehicles Powered by Gasoline Engines	ORIGINAL PI BEGIN	PLAN SCHIDULE COMPLETE	φ      
i.	Secure Merorandum of Understanding from Department of Motor Vehicles (applies also to Strategies A-4, A-5, A-6, and A-8).	Feb. 15'73	Apr. 15,'73	No action taken
;	State to adopt legislation authorizing required implementation of this strategy.	Feb. 15'73	July 1,'73	Not completed
m.	. Prepare a detailed RD&D and implementation work plan for entire project.	Feb. 15'73	July 1,'73	Completed.
.;	9	June-1,'73	July 1,'73	Action inadequate; Insufficient funds.
i,	Develop and refine retrofit control equipment through a joint City-State-industry program.	Feb. 15,'73	Jan. 1'74	Not completed
vo .	Develop and adopt test standards for all vehicles to be equipped with systems - City and State to develop test procedures (see Strategy A-4).	Feb. 15,'73	Apr. 1,'74	Not completed
7.	State Department of Environmental Conservation (or their designee) to certify devices.	Apr. 1,'74	July 1,'74	Not completed
'n	Train mechanics to insure proper installation of retrofit devices by independent garages (included as part of Strategy A-6).	Jan. 1,'74	July 1,'74	No action taken
6	Installation by service industry to be completed on all vehicles registered in Metropolitan area (dependent upon the development of an emissions test procedure and the implementation of an inspection network - ref. Strategy A-4).	July 1,'74	May 1,'75	No action taken
10.	Enforcement-would be through the New York State Department of Motor Vehicles. Centrol would be exerted through a semi-annual emission inspection program (See Strategy A-4).	July 1,'74	Ongoing	No action taken
11.	Public education effort:	,		
	a. Apprise truck owners and/or operators of the need for retrofit systems, the limitations thereof, and cost Seek their cooperation. Must begin immediately.	Feb. 15,'73	On going	No action taken
	b. Educational effort for all garage mechanics to insure proper installation of retrofit devices. Develop training program for implementation (Item 7).			

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(/)	TRAINER A-3: Tri-Annual Emission Inspection of All Livery	ORI	GINAL PLA	ORIGINAL PLAN SCHEDULE	3.10263
1	Vohioles Operating in New York City	BEGIN		COMPLETE	001410
i	Secure Memorandum of Understanding from Taxi and Limousine Cormission outlining direction and scheduling for inspection program.	Feb.	Feb. 15,'73	Apr.15,'73	No action taken
ri .	legislative authority to control all livery vehicles. (New York City Council)	Feb.	Feb. 15,'73	July 1,'73.	Action inadequate; Only Medallion cabs
, m	Secure additional funds needed to complete program (City/State Federal foint funding).	Feb.	Feb. 15,'73	July 1,'73	covered. Not completed
	Set up facility and check out equipment (eight months). Minimal funds have already been secured by the Taxi and Lincusine Commission, including \$190,000 in federal support so that the program is already underway.	May 1,'73.	. 73 .	Jan. 1,'74	Action inadequate; facility capacity adequate for only one inspection
10	Begin full-scale operation with required inspections for entire livery population (four to twelve months).	Jan. 1,'74	., .74	Jan. 1,'75	annually. No action taken
	Establish an inventory monitoring and scheduling system to aid in management of enforcement activities (requires increased program funds - City responsibility).	May 1,'73	.73	Jan. 1,'74	No action taken
7.	Periodic spot-check to insure compliance.	Jan. 1,'74	.74.	gniog-	No action taken

PATESY A-4: Heavy Duty Vehicle Emissions Inspection	ORIGINAL PLAN SCHEDULE	NN SCHEDULE	STATUS
legislative suthority.	Feb. 15, 73	July 1, 73	Not complete
Secure funds (\$200,000) for RD&D programs (Item 5).	June 1,'73	July 1,'73	Action inadequate; insufficient funds
Develop appropriate test procedures for heavy duty vehicles (New York City Department of Air Resour as with federal aid).	Feb. 15,'73	Jan. 1,'74	Not complete
Establish acceptable inspection standards for heavy duty vehicles.	Jan. 1,'74	Mar. 1,'74	Not complete
Secure funds (\$2.6 million) to set up and build inspection facilities (13 test lanes) in the New York Metropolitan			
funds for planning and design capital funds	Feb. 15,'73	July 1,'73 Jan. 1,'74	No action taken
Select sites, design facilities, purchase land and equipment and begin construction.	July 1,'73	Jan. 1,'75	No action taken
Complete construction.		Jan. 1,'75	No action taken
Hire and train personnel	Sept. 1,'74	Jan. 1,'75	No action taken
לה לה מים	Jan. 1,'75	Ongoing	Not required
Periodic spot check to insure compliance.	May 1,'75	Ongoing	Not required
Prepare detailed N&D and Implementation Plan.	May 1,'73	July 1,'73	No action taken
Define and Evaluate heavy duty vehicle population	Mar. 1,'73	Oct. 1,'73	No action taken
and operating characteristics.			

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ORIGINAL PLAN SCHEDULE

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July 1,'73	Jan. 1,'75	July 1,'73	Jan. 1,'74	Jan. 1,'75	Jan. 1,'75	Ongoing	Ongoing
June 1,'73	Feb. 15 '73	June 1,'73	July 1,'73	Nov. 1,'73	Nov. 1,'73	Jan. 1,'75	May 1,'75
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. Training of instructors completed.

Training and retraining programs.

6. Continue training activities on periodic basis, updating when necessary.

STATUS	Not complete	Action inadequate; Pilot program funds	Not complete	No action taken	No action taken	Not required til future date
COMPLETE	July 1,'73	July 1,'73	Oct. 1,'73	Jan. 1,'74	Ongoing	Ongoing
BEGIN COMPLE	May 1,'73	June 1,'73	July 1,'73	oct. 1,'73	Jan. 1,'74	Dec. 1,'74

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ORIGINAL PLAN SCHEDULE

1. Investigate tus maintenance procedures of the Transit Authority		
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		and franchised bus operators; evaluate problem.
	the Manhattan and Bronx Surface Transit Operating Authority,	10

- . Prepare an 3252 and implementation work program.
- 3. Develop and enforce emission specifications for all bus purchases.
- . Develop a compliance program and design all necessary garage facilities and facility improvements.
- 5. Secure capital funds to build and renovate bus garages (up to \$100 million), purchase test aguipment (approximately \$1 million)
- 6. Crash program to build and removate bus garage facilities, equip with emission inspection equipment, etc.
- 7. Secure funds (\$1 million) for RD&D programs (Items 1, 5, 8, and 9).
- 3. Develop dynamic emission test procedure for diesel buses relating to New York City operating conditions.
- 9. Train mechanics to perform dynamic test on diesel buses.
- 9a. Start up with available facilities.
- 10. Full implementation (with periodic program evaluation).

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	Apr. 1, 173	July 1,'73	Not complete
	July 1,'73	Sept.1,'73	No action taken
	July 1,'73	Sept.1,'73	No action taken
	Feb. 15,'73	Jan. 1,'74	No action taken
	Feb. 15,'73	Apr. 1,'74	No action taken
	July 1,'73	May 1,'75	No action taken
	Sept. 1,'73	Oct. 1,'73	No action taken
•	Oct. 1,'73	Oct. 1,'74	No action taken
	Oct. 1,'74	Apr. 1,'75	No action taken
	July 1,'74	Ongoing	No action taken
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Secure agreements with New Jersey and Connecticut to adopt strategies similar to A-2 and A4 through A-9 in Tri-State Region and to proceed with implementation near the same schedule as indicated in this Work Program or petition EPA to promulgate necessary regulations.

contranention after they enter New York and that emissions by vehicles within New Jersey and Connecticut do not cross State lines to cause contravention of oxidant standard. in assurances that vehicles registered in the New Jersey and Work through the Environmental Protection Agency to make Connectiout portions of the Region do not cause standard New York. Secure federal understanding.

. SILIES COMPLETE CKIGINAL PIRN SCREDULE

Not completed Apr. 15,'73 Not completed June 1,'73 Feb. 15,'73

STRATEGY A-11: Californie Taxi Package

1. Secure Memorandum of Understanding with Taxi and Limousine Commission.

- . Storte registrons.
- Enforce.

Memorandum of Understanding A. to, be secured and regulation T. promulgated prior to September 1974, so that rules are fin effect prior to purchase and delivery of 1975 model by year taxis.

BEGIN

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cormission's specime
e fications state
that 1975 model
year taxis "should"
be equipped with
California package.
Specifications
must be amended to
read "must."

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Not required til

Completed

Jan. 1,'75 Jan. 1,'75

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future date

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TRATEGY B-1A:	

ORIGINAL PLAN SCHEDULE

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Secure Memorandum of Understanding supporting strategy and	(i)	11	e policies for re	()
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- Prepare a detailed study work plan.
- Secure funds (\$200,000) to work out details and evaluate adequacy and impact of control strategy and to design and crgenize a paraprofessional enforcement staff (Items 4, 5,
- Evaluate adequacy of existing regulations.
- Analyze impact of each regulation.
- Develop and adopt new regulations as required.
- Develop a detailed implementation work plan.
- Design and organize a paraprofessional staff to enforce all traffic regulations. Requires adoption of New York City Council Intro 633.
- Secure funds (\$500,000 startup; \$14.4 million annual expense) to support a paraprofessional enforcement staff. This system will become part of the City's traffic control system and will bring other benefits in addition to cleaner air.
- Begin strategy implementation with existing available ä
  - personnel; Phase in the paraprofessional staff.

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	July 1,'73	No action taken
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	Sept. 1,'73	No action taken
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Nov. 1,'73 Jan	Jan. 1,'74	Not completed

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STATES	Not completed	No action taken	No action taken	No action taken	No action taken	Not required til	ruture date Not required til future date	Not required til	incure date		A	61	
ORIGINAL FLAN SCHEDULE	Apr. 15, 73	July 1,'73	Sept. 1,'73	Jan. 1,'75	July 1,'74	Apr. 1,'75	Jan. 1,'75	Ongoing					
ORIGINAL PI	Feb. 15, 73	May 1,'73	July 1,'73	Sept. 1,'73	Sept. 1,'73	Oct. 1,'74	Nov. 1,'74	Jan. 1,'75					
The Manager of the Ma	Secure Memorandum of Understanding from the Transportation Administration, the Traffic Lepartment, the Police Department, and the Tri-State Regional Planning Commission supporting strategy and guaranteeing assistance in development and implementation of this strategy.	Propare a detailed NDSD and implementation work plan (coordinate with Strategies B-1A, B-3, B-4, B-5, and B-6).	. Secure funds (\$3 million) for the development of a regional and CBD traffic control master plan.	. Develop and adopt a regional traffic control master plan.	. Organize and staff a street-use activity coordinating group	. Demonstrate key elements of the traffic control master plan.	. Secure funds (\$15 million capital; \$5 million annual expense) for full scale implementation.	. Implement traffic plan: CBD's first; Region afterwards.					
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Scours Memorandum of Understanding with the Taxi and Limousine			-
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- Develop a detailed implementation work plan in cooperation with the Taxi and Limousine Commission.
- 3. Secure FDSD funds (\$500,000) required to develop this strategy.
- . Collect necessary air quality data; select high pollution streats in midtown and downtown Manhattan.
- 5. Establish enforcement procedures within Taxi and Limousine Commission.
- 6. Secure funds (\$500,000) for strategy implementation.
- 7. Empand program for selective ban on cruising to hot spot streets; set up necessary taxi stands, etc.
- 3. Initiate cruising bans on selected streets in midtown.
- 9. Evaluate impact (theoretical prior to ban; measure impact after implementation).

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July 1,'73 July 1,'73	Sept. 1,'73 Jan. 1,'74	No action taken
Jan. 1,'74	July 1,'74	No action taken
July 1,'73 Jan. 1,'74	Jan. 1,'74 Jan. 1,'75	No action taken
Jan. 1,'74	July 1,'74	No action taken
Nov. 1,'73 Jan. 1,'75	Jan. 1,'74 Mar. 1,'75	No action taken Not required ti future date

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- 3. Secure funds (\$1.5 million) for the development of both CBD and City-wide parking policies.
- 4. Develop and adopt a CBD parking policy and establish an agreement with the taxi industry to establish jitney service between Hudson waterfront fringe parking lots and centers of businesses.
- 5. Develop a City-wide parking policy.
- 6. Secure funds (approximately \$15 million) for implementation of both C3D and City-wide parking policies.
- 7. Insure on-street parking regulations are enforced by existing or para-professional staff (Ref. Strategy B-lA).
- 8. Select off-street parking facilities to be eliminated.
- 9. Furchase and close down selected off-street parking facilities (may require City or State legislation to accomplish). Jitney services in operation.
- Evaluate impact of program (requires traffic counts at key locations before and after implementation).
- 11. Secure funds for implementation of City-wide policy.
- 12. Implement city-wide policy.

SULFEES	No action taken	No action taken		No action taken	•	Not required til future date	No action taken	No action taken							
DULE	June 1,'73	Apr. 15,'73		Aug. 1,'73	Nov. 1,'73	Feb. 1,'74	Dec. 1,'73	Jan. 1,'74	Feb. 1,'74	Jan. 1,'75		Jan. 1,'76	July 1,'74	Onçoing	
ORIGINAL PL EEGIN	Feb. 15,'73	Feb. 15,'73		June 1,'73	Aug. 1,'73	Nov. 1,'73	Nov. 1,'73	July 1,'73	Nov. 1,'73	Feb. 1,'74		Nov. 1,'75	Apr. 1,'74	July 1,'74	
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Order necessary equipment (primarily buses) (new	to conform to low emission spec	as part of
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5. a. Implement strategy with existing equipment. b. Full implementation.

6. Secure Memorandum of Understanding.

Prepare detailed work plan.

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	Sept. 1,'73	Nov. 1,'73	Not completed
	Nov. 1,'73	May 1,'74	No action taken
	May 1.'74	July 1,'74	No action taken
	July 1,'74	Sept. 1,'74	No action taken
•	July 1,'74	Ongoing	No action taken
	Feb. 15,'73	Nor. 15,'73	No action taken
	July 1,'73	Oct. 1,'73	No action taken

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- Prepare detailed study and implementation work plan.
- Secure all necessary agreements.
- Secure all necessary study and design funds.
- Prepare alternative traffic plans for borough of Manhattan (see Strategy B-1B).
- Secure funds (\$10 million) to design and install toll booths.
- Investigate bridge and tunnel activity and related local air politication prior to implementing tolls and after implementation. Evaluate impact.
- Modify bridge facilities. (n)
- Implement bridge tolls.

DEGIN	ORIGINAL PLAN SCHEDULE GIN COMPLETE	STATUS	w1
Apr. 1,'73	July 1,'73	No action take	w.
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Oct. 1,'73	Jan. 1,'74	No action ta	take
July 1,'73	Jan. 1,'74	No action ta	tak
Jan. 1,'74	Mar. 1,'74	No action take	, 'X
Mar. 1'74	Jan. 1,'75	No action ta	take
July 1, '74	Oct. 1,'74	No action take	a, X
May 1,'74	July 1,'74	No action take	X,
Oct. 1.'74	Jan. 1,'75	Not required future date	ro
Jan. 1,'75	Ongoing	Not required future date	71

GATEON C-8: Staddering of Work Hours	ORIGINAL PL	ORIGINAL PLAN SCHEDULE GIN COMPLETE	SALVES	
Merorandum of Understanding with Mayor's office, Transportation	Feb. 15,'73	Apr. 15,'73	No action taken	
24 .74				
Prepare a detailed study and implementation work plan.	May 1,'73	July 1,'73	No action taken	
re funds	July 1,'73	Sept. 1,'73	Sept. 1,'73 No action taken .	
807:	Sept. 1,'73	July 1,'74	No action taken	
Survey, etc.	July 1,'74	Ongoing	No action taken	
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ORIGINAL PLAN SCHEDULE <sup>++</sup> STATUS COMPLETE	15,'73 A	Oct. 1,'73 Jan. 1,'74 No action taken	Jan. 1,'74 Mar. 1,'74 No action taken	Mar.,1,'74 Jan. 1,'75 No action taken			y. Jan. 1,'76 . Apr. 1,'76 Not required til future date
STEEN D-3: After-Hours Delivery to Stores and Office Buildings	Secure Marorandur of Understanding from the Mayer's Office, Transportation Administration, Police Department, Economic Development Administration, and City Planning Commission to assist in and support all necessary studies.	Prepare a detailed study work plan.	ree all necessary.	Investigate concept; develop alternative scenarios; evaluate	repare a detailed demonstration wor	molement de	in a team of the second of the

++ Strategy D-3 was elevated from a maintenance strategy to a primary strategy by the State on April 17, 1973, but a modified schedule for implementation was never submitted. As a primary strategy implementation must occur as expeditiously as practicable.

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Secure a Memorandum of Understanding from federal Environmental Fromesian Agency and the Mayor's office supporting program.

3. Secure commitment for all necessary funds for start-up (includ-

 Set up an independent public information and education group to implement the programs described.

. Fin full negla coverage; develop programs; develop materials; initiate public information and education effort.

7. Secure full program funding (\$500,000 for first year).

Prepare a detailed long range implementation work plan.

3. Implement entire action program.

Not completed	Not completed	Action inadequate	No action taken	No action taken	No action taken	No action taken	No action taken
July 1,'73	Apr. 15, '73	Sept. 1,'73	Nov. 1,'73	July 1,'74	Mar. 1,'74	Apr. 1,'74	Ongoing
May 1, '73	Feb. 15,'73	July 1,'73	Sept. 1,'73	Sept. 1,'73	Jan. 1,'74	Mar. 1,'74	Apr. 1,'74
	July 1,'73	July 1,'73	July 1,'73 73 Apr. 15,'73 Sept. 1,'73	July 1,'73 73 Apr. 15,'73 3 Sept. 1,'73 73 Nov. 1,'73	July 1,'73 73 Apr. 15,'73 3 Sept. 1,'73 73 Nov. 1,'73 73 July 1,'74	July 1,'73  73 Apr. 15,'73  3 Sept. 1,'73  73 Nov. 1,'73  74 Mar. 1,'74	July 1,'73  73 Apr. 15,'73  8 Sept. 1,'73  73 Nov. 1,'74  74 Mar. 1,'74  4 Apr. 1,'74

Miller C-1: Marketing Public Transit System	ORIGINAL PI	ORIGINAL PLAN SCHEDULE	STATUS
Merorandum of Understanding with Metropolitan Transportation Administration, agreeing to develop and implement this strategy.	Feb. 15, 73	Apr. 15, '73	Not complete
repare, in cooperation with the Metropolitan Transportation unifority, a detailed study and implementation work plan.	Sept. 1,'73	Jan. 1,'74	No action taken
cure funds (\$1 million) to develop and initiate a major sketing effort.	Jan. 1,'74	Mar. 1,'74	No action taken
Evaluate strategies and techniques used by other operating agencies to market public transit.	Mar. 1,'74.	July 1, '74	No action taken
stablish best approach for Metropolitan area.	July 1,'74	oct. 1,'74	No action taken
rial test marketing procedures.	Oct. 1,'74	Apr. 1'75	No action taken .
Decision on marketing strategies.	Nov. 1,'74	Jan. 1,'75	No action taken
Secure funds (\$5 million, annually) for new program	Feb. 1,'75	May 1,'75	Not required til future date
repare marketing materials.	Jan. 1,'75	May 1,'75	Not required til
Implement program	May 1,'75	Ongoing	Not required til
Pariodic evaluation of program impact.	July 1,'74	O_going	Not required til

(7)	IRRIEGY C-6: Integration of New York City Bus and Subway	ORIGINAL PLAN SCHEDILLE	N SCHEDILE	2.17472
	Systems to Form a Coordinated Grid of Cir-	BEGIN	COMPLETE	
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.i	Memorandum of Understanding with the Metropolitan Transportation Authority (Transit Authority), Transportation Administration, Bureau of Franchies, and private transit operators, on intent of study, support of same and assurance of assistance.	Feb. 15,'73.	Apr. 15,'73	Not completed
2.	Prepare a detailed study wor	oct. 1,'73	Jan. 1,'74	No action tak
'n	. Secure study funds (\$3 million).	Jan. 1,'74	Apr. 1,'74	No action tak
·r	Investigate problem of integrated transit system for New York City. Design alternative proposals and prepare a set of recommendations for change.	Apr: 1,'74	Jan. 1,'75	No action tak
in	. Prepare a detailed implementation work plan.	Oct. 1,'74	Jan. 1,'75	Not required future date
40	Secure funds for implementation.	Mar. 1, "75	July 1,'75	Not required
7.	Begin implementation.	July 1,'75	Ongoing	Not required
m	Evaluate impact once changes are complete.	Oct. 1,'77	Dec. 1,'77	Not required
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Trucking Activities	BEGIN PLAN	AN SCHEDULE COMPLETE	STATUS
Secure Memorandum of Understanding from Tri-State Regional Planning Cormission, Economic Development Administration, Circ. Planning Cormission, Transportation Administration, and procking industry to support and assist in a major investigation and demonstration of truck consolidation.	Feb. 15, 73	Apr. 13, 73	
are a detailed study work plan.	oct. 1,'73	Jan. 1,'74	No action taken
Secure funds (\$3 million) required for all necessary research and demonstrations.	Jan. 1,'74	Apr. 1,'74	No action taken
Analyze problem throughout Metropolitan area. Prepare alterna- tive strategies for consolidating industry.	Apr. 1,'74	Jan. 1,'75	No action taken
nstrate alternatives.	Mar. 1,'75	Jan. 1,'76	Not required til
Select and refine a region-wide program.	oct. 1,'75	Apr. 1,'76	Not required til
are a detailed implementation work plan.	Apr. 1,'76	July 1,'76	Not required til
late implementation efforts.	July 1,'76		Not required til
Complete implementation.	1 1 1 1 1 1 1 1 1	June 30, '78	Not required til .
Develop demonstration program.	Dec. 1,'74	Mar. 1,'75	= .
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ORIGINAL PLAN SCHEDULE BEGIN COMPLET	AN SCHEDULE COMPLETE	STATUS
 Feb. 15,'73	Apr. 15,'73	Not completed
Oct. 1,'73	Jan. 1,'74	No action take
July 1,'73	July 1,'74	No action take
Apr. 1,'74	July 1,'74	No action take
July 1,'74	Ongoing	No action take
Dec. 1,'73	Mar. 1,'74	No action take

Prepare, in cooperation with the Transportation Administration a detailed development and implementation work plan.

Memorandum of Understanding stating need for and acceptance of program to accelerate rehabilitation of New York City transit system with Mayor's office, City Planning Commission, and Metropolitan Transportation Authority (Transit Authority).

Actual Lination of the Existing New York City Transit System

STEATERST C-7:

Complete revisions in the existing regional master transportation plan to reflect environmental (implementation plan) constraints (Tri-State Regional Planning Commission, New York City Planning Commission, Transit Authority).

Develop and initiate a funding program to satisfy needs of all necessary modifications.

Initiate rehabilitation program. Complete rehabilitation program.

Secure research and design funds.

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# STRANGGY D-4: Provision of Off-Street Loading Facilities

morandum of Understanding listed under Strategy D-3.
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- . Undertake Garment Center Transportation Study -
- Project Objectives:

  Task I Data Acquisition

  Task II Analysis and Identification of Problems

  Task III Development of Immediate Action Program

  Task IV Establish Long Range Issues

  Task V Reports
- b. Phase II and III tentatively scheduled:
- 3. Evaluate feasibility of off-street loading concept from results of Garment Center Study.
- If feasible, then investigate areas throughout City where implementation would be environmentally beneficial.
- 5. Decision to proceed with implementation.
- 6. Implementation.

ORIGINAL PLAN BEGIN	AN SCHEDULE COMPLETE	STATUS
Feb. 15,'73	Apr. 15'73	No action take
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Mar. 1,'73	Mar. 1,'74	Not completed
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Mar. 1,'75	Mar. 1,'76	Not required ti future date
Mar. 1,'74	June 1,'74	No action taker
June 1,'74	Jan. 1,'75	No action taken
Jan. 1,'75	Mar. 1,'75	Not required ti-
Mar. 1,'75	Ongoing	2

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No action taken

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July 1,'74

Prepare a cost-benefit analysis of land use controls.

Secure funds (\$500,000) for a land use environmental review board.

No action taken

July 1,'74

May 1,'74

No action taken

Ongoing

July 1,'74

Institute the land use environmental review board with

enforcement powers.

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	ממיים השם בחדיתים	BEGIN	COMPLETE	
ri .	Secure a Memorandum of Understanding from the Mayor's Office and City Planning Commission stating intent of strategy and confirming support for and assistance in developing a New York City land use plan.	Feb. 15,'73	Apr. 15,'73	No action taken
2.	Prepare a detailed study and implementation work plan.	July 1, '73	Oct. 1,'73	No action taken
(i)	Secure funds (\$2 million) for all necessary studies.	Oct. 1,'73	Jan. 1,'74	No action taken
7	Establish relationship between land use, urban density, transit demand and air quality.	July 1,'73	Jan. 1,'74	No action taken
10	Develop a detailed land use plan for the Metropolitan area (crash program).	July 1,'73	July 1,'74	No action taken
6.	Develop and propose new zoning regulations.	Jan. 1,'74	July 1,'74	No action taken
1.	Develop guidelines for analysis of land use and air	Jan. 1,'74	July 1,'74	No action taken

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Secure Memorandum of Understanding from Mayor's Office Transportation Administration, Traffic Department, and Police Department indicating understanding of strategy				
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No action taker.

Apr. 15,'73

ORIGINAL PLAN SCHEDULE

- 2. Prepare a detailed implementation work plan.
- 3. Secure funds (\$500,000) to prepare and organize for implementation, conduct surveys, analyze impact, etc.
- . Israblish implementation zones and select best strategy for implementation.
- 5. Prepare a cost/Demefit analysis on all proposals.
- . Survey public to determine reaction to proposals.
- 7. Evaluate effectiveness of primary strategies in meeting
  - projected reductions. Dimonstrate feasibility if strategy is needed.
- . Conduct major public information briefing on impact of strategy, the response expected of the public, etc.
- 0. Implement strategy if required.

No action taken	No action taken	No action taken	Not required til	da ii.	Not required til	Not required til	Not required til future date	Not required til future date
Jan. 1,'74	July 1,'74	Jan. 1,'75	Jan. 1,'75	Jan.: 1, '75	Apr. 1,'75	May 1,'75	June 1,'75	
Oct. 1,'73	Jan. 1,'74	July 1,'74	oct. 1,'74	oct. 1,'74	Dec. 1,'74	Apr. 1,'75	Mar. 1'75	June 1,'75

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- Prepare study work plan.
- 3. Feasibility study.
- 4. Decision to implement.
- 5. Develop legislative package.
- 6. Implement.

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action	action	action	action	action	Not required til future date
No	No	No.	No	No	Not
!	Apr. 1,'74	July 1,'74	July 1,"74	Jan. 1,'75	Ongoing
-	Jan. 1,'74	Apr. 1,'74	June 1,'74	July 1,'74	July 1,'75.
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Prepare study work plan.

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Apr.	Jan.	July	Jan.	June
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<sup>3.</sup> Determine extent and impact of changes required.

<sup>4.</sup> Decision to implement.

<sup>5..</sup> Implement.

ORIGINAL PLAN SCHEDULE STATUS .	1,'73 Ja	Jan. 1,'74 Mar. 1,'74 No action taken	Mar. 1,'74 Jan. 1,'75 No action taken	Dec. 1,'74 Feb. 1,'75 Not required til	Feb. 1,'75 Apr. 1,'75 Not required til	. Apr. 1,'75 July 1,'75 Not required til	July 1,'75 Ongoing Not required til	
PARTICE C-3: Reduced or "Proe" Transit Fare	Prepare detailed study work plan.	Secure funds to prepare major evaluation of transit funding.	Initate evaluation of transit financing.	Develop legislation, if necessary.	Decision on strategy for financing transit operations.	Decision to Implement.	Implement.	

6. Decision to Implement.

7. Implement.

4. Develop legislation, if necessary.

STREETS C-3: Reduced or Free, Transit Pare

1. Prepare detailed study work plan.

susained D-2: Ingrovements in Goods Novement Dechnology	
Movement	
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<sup>.</sup> Prepare study work plan.

## 10. Begin implementation.

1 173	COMPLETE	
OCE. 11 .3	Jan. 1,'74	No action taken
Jan. 1, '74	Apr. 1,'74	No action taken
Apr. 1,'74	July 1,'74	No action taken
July 1,'74	Jan. 1,'75	No action taken
Jan. 1,'75	July 1,'75	Not required til
July 1,'75	July 1,'76	Not required til future date
July 1,'76	oct. 1,'76	Not required til
oct. 1,'76	Jan. 1,'77	Not required til
Jan. 1,'77	Apr. 1,'77	Not required til
Apr. 1,'77	Ongoing	Not required til

<sup>.</sup> Secure funds for study and demonstration.

<sup>4.</sup> Investigate and evaluate alternatives.

E. Submit proposals for change.

<sup>.</sup> Demonstrate alternatives.

<sup>.</sup> Prepare implementation work plan.

Secure funds for implementation.

11	The control of the co	OMIGINAL PLAN	6	8 21 22 23
.;	Course Memorandum of Understand.	July 1,'73	Oct. 1,'73	No action taken
ei.	Frepare detailed study work plan.	oct. 1,'73	Jan. 1,'74	No action taken
1.1	Secure funds for study and demonstration.	Jan. 1,'74	July 1,'74	No action taken
·÷	restrigate potential for existing rail facilities and sasibility of new facilities.	July 1,'74	Jan. 1,'75	No action taken
1.1	Cost-Denelly analysis.	oct. 1,'74	Jan. 1,'75	Not required til
v.	Serect composition project.	Jan. 1,'75	July 1, 75	nutre date Not required til future date
;;	Frepare detailed demonstration work plan.	July 1, '75	oct. 1,'75	Not required til future date
(1)	Tradement demonstration.	Oct. 1,'75	Jan. 1,'77	Not required til future date
	Evaluate demonstration and decide whether to implement.	Jan. 1,'77	Apr. 1,'77'	Not required til
d	וון איני פון פון איני פון	Apr. 1,'77	Ongoing	Not required til future date

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<sup>3.</sup> Fregare detailed study work plan.

<sup>.</sup> Evaluate demonstration and decide whether to implement.

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<sup>.</sup> Secure funds for study and demonstration.

Investigate potential for existing marine facilities and feesibility of facilities.

<sup>.</sup> Cost-benefit analysis.

<sup>.</sup> Folect demenstration project.

<sup>.</sup> Fragare detailed demonstration work plan.

<sup>.</sup> Inglement demonstration.

repare Memorandur of Understanding.  repare detailed study work plan.  coperative effort  evelop and evaluate a list of possible work programs.	11 0 110 11 1
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No action taken No action taken No action taken

STATUS

No action taken

No action taken

Jan. 1,'74

Oct. 1,'73 Jan. 1,'74

Establish joint city/university programs.

Initiate programs.

Ongoing

	ONIGINAL PI	ORIGINAL PLAN SCHEDULE	STATUS
SETESY D-2: Special Truck Design	BEGIN	COMPLETE	
Prepare detailed work plan.	Oct. 1,'73	Jar.1,'74	No action taken
Secure study and demonstration funds.	Jan. 1,'74	Apr. 1,'74	No action taken
Secure assistance and support from vehicle manufacturers.	Jan.1,'74	July 1, '74	No action taken
Investigate needs of freight operators, special vehicles now being used, existing vehicle population.	Apr. 1,'74	Jan. 1,'75	No action taken
Define vehicle requirements for CBD operations and develop specifications for same.	Oct. 1,'74	Apr. 1,'75	Not required til future date
Design and fabricate special demonstration vehicles.	Jan. 1,'75	Jan. 1,'76	Not required til
Der sarrate fleet operation.	Jan. 1,'76	Jan. 1,'77	Not required til
Evaluate success of demonstrated specialty vehicles.	Jan. 1,'77	Apr. 1,'77	Not required til
Decision on future action.	Jan. 1,'77	Apr. 1,'77	Not required til future date

STRATEGY D-2: Special Truck

## STRATEGIES DELETED FROM ORIGINAL WORK PLAN

The following steps were deleted from the original work plan submitted by New York. Staps requiring a dost/henefit analysis, and demonstration program were deemed unnecessary for primary strategies. The steps calling for a "decision to implement" are inappropriate for maintenance strategies which the State committed itself to

STEETS	1011	IOEM
2-7:	A-7: Diesel Bus	Prepare a Cost/Benefit Analysis.
0 -0	Stagger Work Hours	Demonstrate Program
: ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ;	Citizen Participa-	Prepare demonstration work plan; secure demonstration funds; implement demonstration program.
3-7:	SILION	Make decision to implement.
: 0	integrate Transit	Make decision to adopt change.
::-2	D-1: Consolidate Trucking	Make decision to implement.
D-3:	D-3: After Hours Goods Delivery	Decision to implement.

## THE CITY OF NEW YORK DEFAMILIENT OF AND DESCURGES BUREAU OF TECHNICAL SERVICES

DATA FEPORT AEROMETRIO NETWORK

> Calendar Year 1973

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## ATTACHMENT D

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,	)	
	Plaintiffs, )	CIVIL ACTION
v.	)	
MALCOLM WILSON, et al.,	)	NO.
	Defendants. )	

## AFFIDAVIT OF BRIAN T. KETCHAM

BRIAN T. KETCHAM, P.E., being first duly sworn, deposes and says that:

1. I am currently employed as Staff Engineer for Citizens for Clean Air,
Inc. (CCA), a non-profit environmental organization, with offices at
25 Broad Street, New York, New York 10005. In this capacity I am responsible for investigating and reporting on the implementation and enforcement of the New York City Transportation Control Plan.

2. I hold a B.S. degree in Mechanical Engineering from Case Institute of Technology and have completed three years of graduate study in Mechanical Engineering and Urban and Transportation Planning at the Massachusetts Institute of Technology. I am a Professional Engineer registered in the

State of New York with twelve years of professional experience in the design and testing of automotive pollution central equipment, of alvanced automotive power plants, and in the planning and implementation of strategies to alleviate mobile source air pollution problems.

- 3. Defore joining CCA, I worked for more than four years in the New York City Department of Air Resources developing a program to reduce vehicular-related pollution in the City: first, as Director of the Eureau of Motor Vehicle Pollution Control, from July 1969 to December 1971, then as Director of the Offices of Planning and Implementation, New York City Department of Air Resources from January 1972 to November 1973. As Director of these offices, I was responsible for developing the New York City Transportation Control Plan, and the schedule for implementation in consultation with New York State Department of Environmental Conservation. I directed the preparation of the Plan and helped prepare and implement technical aspects of the Taxi and Limousine Commission administrative code designated to mitigate the impact of taxicab operation on the City's air quality. In recognition of this role in developing the City's program for abating vehicle related air pollution I was awarded the 1973 New York City Merit Award.
- 4. I have examined the submission prepared by plaintiffs on the "New York City Transportation Control Plan: Table of Requirements Violated" and believe, based on information available to me, that this submission is an accurate description of the defendant's non-compliance with the Plan's requirements.
- 5. I have examined the "Proposed Schedule for Implementation" submitted by plaintiffs, and have determined that this schedule allows a reasonable

and sufficient period of time for the implementation of each of the steps required by the original Plan.

Brian T. Ketchem, P.E.

hew york Iss.

Signed and sworn to

before me this /5 day of August, 1974.

Lora Lee Gunn

LORA LEE GUIIN
Holary Public. State of New York
No. 31-1601925
Qualified in New York County
Commission Expires March 30, 1975

AREA CODE 202

EDWAPD BERLIN ANTHONY Z. ROISMAN TLADYS KESSLEP DAVID R. CASHDAN

KARIN P. SHELDON STUART M. BLUSSYONE CLIFTON E. CURTIS

DATED AUGUST 5 1974

PHONE 833.9079

August 5, 1974

CITIZEN SUIT NOTICE

Chairman David L. Yunich Metropolitan Transportation Authority 1700 Broadway New York, New York 10019

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Dear Chairman Yunich: damo risen

We are writing on behalf of the individuals and organizations listed at the end of this letter. On February 28, 1974, we served you, through your legal counsel to the Governor of the State of New York, with notice that you were violating requirements of the New York City Metropolitan Area Air Quality Implementation Plan, a portion of the applicable implementation plan for the State of New York, approved by the Administrator of the United States Environmental Protection Agency (EPA) on June 22, 1973. At that time you were in violation of the requirements of the plan, by reason of your failure to carry out elements of the schedule of compliance set forth in the plan at pages B-1 through B-29 and in the letter of April 17, 1973, from the Governor of the State of New York to the Administrator of EPA.

We are writing at this time to remind you once again of your continuing violations of the requirements of the plan and to protest your lack of action. The enclosed "Table of Requirements Violated" sets forth the plan requirements which you have violated to date.

Since it has been made apparent that responsible officials of the State and City of New York intend to continue to refuse to comply fully with the requirements of the plan we feel it necessary to seek judicial relief against you pursuant to § 304 of the Clean Air Act to enforce the plan.

Sincerely,

Clifton E. Curtis Anthony Z. Roisman

David G. Hawkins

Natural Resources Defense Council

1710 N Street, N.W. Washington, D.C. 20036 Telephone: 202-783-5710

### On behalf of the following:

Friends of the Earth, Friends of the Earth New York Branch Natural Resources Defense Council Brooklyn Environmental Coalition Citizens for a Better New York Citizens for Clean Air Committee for Better Transit, Inc. Environmental Action Coalition Harlem Valley Transportation Association Institute for Public Transportation Northeast Transportation Coalition New York City Clean Air Campaign, Inc. New York State Transportation Council Sierra Club Weat Village Committee Paul DuBrul David Sive

cc: Russell Train Gerald Hansler NEW YORK CITY TRANSPORTATION CONTROL PLAN: TABLE OF REQUIPEMENTS VIOLATED

	ONIGINAL PLAN SCHEDULE BEGIN COMPLETE	COMPLETE	
Pregare analyses of implementation and planning staff requirements.	1114	April 1,'73	27.36.30
Secure commitment from City and State to fund and him staff.	Apr. 1,'73	June 1,'73	June 1,'73 No action taken
Submit requests for staff expansion.	June 1,'73	July 1,'73	Completed
Hire all personnel or consultants.	July 1,'73	Aug. 1,'73	No action taken
Design and build comprehensive data base and monitoring system.	May 1,'73	May 1,'74	No action taken
tetation of the tetation	29b. 15,'73	Ongoing	No settion taken

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implementation
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study and im
Propare detailed work plan.
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in area.
Db. Review all existing air quality data for the Metropolitan area.  Evaluate adequacy of existing data. Formulate program to adequately define the region's air pollution problem.

Completed

June 1,'73

Feb. 15,'73

ORIGINAL PLAN SCHEDUTE

2. Secure funds (\$511,000) for a crash air quality monitoring program as specified below.

3. Tash program to collect and analyze air quality data throughregion (subcontract consultant): develop report defining mobile source pollution problem.

. Design a comprehensive pedestrian level traffic and carbon monoxide monitoring network for CBD's and other "hot spots".

. Secure funds (8300,000) for a pedestrian level monitoring network.

. Install and check cut this network.

. Use monitoring metwork to determine impact of all control strategies.

Use data from air quality study (Item 3) and from the pedestrian level monitoring tetwork to continuously upgrade accuracy of mobile source emissions inventory. First upgrading to occur following completion of air quality monitoring program.

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Department	1, A-5, A-6,
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1. Secure Memorandum of Diderstanding from Department of Motor	Vehicles (applies also to Strategies A-4, A-5, A-6, and A-8).
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- 2. State to adopt legislation authorizing required implementation of this strategy.
  - 3. Prepare a detailed RD&D and implementation work plan for entire project.
- 4. Secure funds (\$500,000 maximum) for RD&D (Items 4 and 5).
- 5. Develop and refine retrofit control equipment through a joint City-State-industry program.
- 6. Develop and adopt test standards for all vehicles to be equipped with systems City and State to develop test procedures (see Strategy A-4).
- 7. State Department of Environmental Conservation (or their designes) to certify devices.
- 3. Train mechanics to insure proper installation of retrofit devices by independent garages (included as part of Strategy A-6).
- 9. Installation by service industry to be completed on all vehicles registered in Metropolitan area (dependent upon the development of an emissions test procedure and the implementation of an inspection network ref. Strategy A-4).
- 10. Enforcement-would be through the New York State Department of Notor Vehicles. Control would be exerted through a semi-annual enission inspection program (See Strategy A-4).
- 1. Public education effort:
- a. Apprise truck owners and/or operators of the need for retrofit systems, the limitations thereof, and cost. Esest their cooperation. Must begin immediately.

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b. Educational effort for all garage mechanics to insure proper installation of retrofit devices. Develop training program for implementation (Item 7).

BEGIN	COLPILES	, , , , , , , , , , , , , , , , , , , ,
Feb. 15'73	. Apr. 15,'73	action to
Feb. 15'73	July 1,'73	tot complete.
Feb. 15'73	July 1,'73	. Completed.
June1,'73	July 1,'73	Freion inadogue of
Feb. 15,'73	Jan. 1'74	Tot complete.
Feb. 15,'73	Apr. 1,'74	; ot complete
Apr. 1,'74	July 1,'74	: ot completed
Jan. 1,'74	July 1,'74	. To action taken
July 1,'74	May 1,'75	% action taken
July 1,'74	Ongoing	to action taken
Feb. 15,'73	On going	No action taller.
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TATECT 1-3: Tri-lunual Emission Inspection of All Livery Ventoles Operating in New York, City	BEGIN BEGIN	ORIGINAL PLAN SCHLDUL. GIN COMPLETE	
Secure Memorandum of Understanding from Taxi and Limousine Commission cutlining direction and scheduling for inspection program.	Feb. 15,'73	Apr.15,'73	No otion taken
Legislative authority to control all livery vehicles. (New York City Council)	Feb. 15,'73	July 1, '73	Act on inadequate; Onl Medallion cabs
Secure additional funds needed to complete program (City/State Federal joint funding).	Feb. 15,'73	July 1,'73	covered.
Set up facility and check out equipment (eight months). Minimal funds have already been secured by the Taxi and Limousine Commission, including \$190,000 in federal support so that the program is already underway.	May 1,'73 .	Jan. 1,'74	Action inadequate; fecility capacity accuate for only ore inspection
Begin full-scale operation with required inspections for entire livery population (four to twelve months).	Jan. 1,'74	Jan. 1,'75	Ar: ally.
Establish an inventory monitoring and scheduling system to aid in management of enforcement activities (requires increased program funds - City responsibility).	May 1,'73	Jan. 1,'74	No orion taken
Periodic spot-check to insure compliance.	Jan. 1, 74	Ongoing	No ton taken

Farmer and Barry Duty Vehicle Emission Inspection	ORIGINAL PLAN SCHIDELL	M SCHOOL		***	
Legislative authority.	BECIN Feb. 15, 73	July 1, '73	14		
Secure funds (\$200,000) for RD&D programs (Item 5).	June 1,'73	July 1,'73	4.4	on inadequate fileient fod	** 19
Develop appropriate test procedures for heavy duty vehicles (New York City Department of Air Resources with federal aid).	Feb. 15,'73	Jan. 1,'74	8	To complete	
Establish acceptable inspection standards for heavy duty vehicles.	Jan. 1,'74	Mar. 1,'74	Not	Not complete '	
Secure funds (\$2.6 million) to set up and build inspection facilities (13 test lanes) in the New York Metropolitan					
funds for planning and design capital funds	Feb. 15,'73	July 1,'73 Jan. 1,'74	No	orion take.	
Select sites, design facilities, purchase land and equipment and begin construction.	July 1,'73	Jan. 1,'75	×	No oction taker	
Complete construction.		Jan. 1,'75	Nc	ction taker	
Hire and train personnel	Sept. 1,'74	Jan. 1,'75	Nc.	obion taker	
Start up.	Jan. 1,'75	Ongoing	N	cuton taker	
Periodic spot check to insure compliance.	May 1,'75	Ongoing	ON	ction taker	
Prepare detailed R&D and Implementation Plan.	May 1,'73	July 1,,73	ON	No sction taker.	
Define and Evaluate heavy duty vehicle population and operating characteristics.	Mar. 1,'73	oct. 1,'73	NC	ccion taker	

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6a. Complete construction.

ONIGINAL PLAN SCHEDULL COMPLETE COMPLETE COMPLETE No. 1100 take: y 1,'73 No. 15,'73 July 1,'73 No. completed b. 15,'73 July 1,'73 No. completed	July 1,'73	Jan. 1,'75	July 1, 73 No.	Jan. 1, 74	Jan. 1, 75 No	73 Jan. 1, 75 No obtained til	Ongoing
Prepare a detailed ND&D and implementation work plan.  Prepare a detailed ND&D and implementation work plan.  Legislative authority for franchise inspection operations Feb. 15, '73 (State action required).	unds (\$200,000) required for field ssion standards selection. Partially h use of present State and City	Continue field surveillance activities and standards develop- Feb. 15, 73	Commit design and capital funds (\$21.7 million) required for June 1,'73 implementation.	Select sites for 141 test lanes; design facilities; purchaso July 1,'73 land.	Purchase equipment, construct facilities  a. Begin construction.  b. Complete construction.	Hire and train personnel.  Start up (emissions inspection would become a pre-requisite Jan. 1, 75	to vehicle re-registration).  Periodic spot check to ensure compliance.

BEGIN COMPLETE	May 1,'73 July 1,'73 Nc. : mplate	June 1,'73 July 1,'73 Act on inadequate; Pil t program fund	July 1,'73 Oct. 1,'73 Not.complete	Oct. 2,'75 Jan. 1,'74 No otion taken	Jan. 1, '74 Ongoing No cation taken	D.c. 1,'74 Ongoing Not required til
TANTIST A.6: Nechanic Training	. Prepare RD&D and implementation work plan	Secure program funds (\$200,000 program set up; \$300,000 in annual expense).	Preparation of educational materials (with assistance from Federal Environmental Protection Agency) and hiring of instructors.	. Training of instructors completed.	. Training and retraining programs.	. Continue training activities on periodic basis, updating when necessary.

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	Investigate bus maintenance procedures of the Transit Authority	the Manhattan and Bronx Surface Transit Operating Authority,	
SER	ansit	g Auth	er.
Transfer Dienel Dus Maintenance and Inspection	the Tr	eratin	and franchised bus operators; evaluate problem.
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ORIGINAL PLAN SCHIEBLE

- Prepare an RD&D and implementation work program.
- . Davelop and enforce emission specifications for all bus purchases.
- Develop a compliance program and design all necessary garage
- Secure capital funds to build and renovate bus garages (up to \$100 million), purchase test equipment (approximately \$1 million)
- Crash program to build and renovate bus garage facilities, equip with emission inspection equipment, etc.
- Davelop dynamic emission test procedure for diesel buses relating to New York City operating conditions.

Secure furds (\$1 million) for RD&D programs (Items 1, 3, 8, and 9).

- Train mechanics to perform dynamic test on diesel buses.
- a. Start up with available facilities.
- Full implementation (with periodic program evaluation).

BEGIN	COMPLETE		
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Feb. 15,'73	Apr. 1,'74	No action taken	9
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ct. 1,'73	Oct. 1,'74	No act. n taken	5
Oct. 1,'74	Apr. 1,'75	No act n taken	£.
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June 1,'75	Ongoing	Not received til	

reements with New Jersey and Connecticut to adopt . s similar to A-2 and A4 through A-9 in Tri-State	Feb. 15, '73	Apr. 15, '73
on and to proceed with implementation near the same dule as indicated in this Work Program or petition to promulgate necessary regulations.		

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Work through the Environmental Protection Agency to make	assurances that vehicles registered in the New Jersey and	Connecticut portions of the Region do not cause standard	contravention after they enter New York and that emissions	by vehicles within New Jersey and Connecticut do not cross	State lines to cause contravention of oxidant standards in	New York. Secure federal understanding.
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STUTTIGN .-11: California Taxi Package

.. Secure Memorandum of Understanding with Taxi and Limousine Commission.

. Promulgate regulations.

. Enforce.

Memorandum of Understanding 7 to minding to be secured and regulation Total and Limou in promulgated prior to Septem— Commission's social per 1974, so that rules are ficulons state in effect prior to purchase the 1975 model and delivery of 1975 model be orthogonally year taxis.

Year taxis.

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: Strict Enforcement of Existing Traffic Regulations	
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TRATEGY B-1A:	

S T T T T T T T T T T T T T T T T T T T	Secure Memorandum of Understanding supporting strategy and	assuring action by Police Department, Transportation Admini-	tration, and Department of Traffic. Included in agreement must	be policies for removing from City streets, vehicles not in	conformance with hardware strategies (A-2, A-3, A-4, A-5 and A-8)
	Secure Men	assuring a	tration, a	be policie	conformanc

- Prepare a detailed study work plan.
- secure funds (\$200,000) to work out details and evaluate adequacy and impact of control strategy and to design and organize a paraprofessional enforcement staff (Items 4, 5, 6, 2,
- . Evaluate adequacy of existing regulations.
- 5. Analyze impact of each regulation.
- . Develop and adopt new regulations as required.
- 7. Sevelop a detailed implementation work plan.
- 3. Design and organize a paraprofessional staff to enforce all traffic regulations. Requires adoption of New York City Council Intro 503.
- . Secure funds (\$500,000 startup; \$14.4 million annual expense) to support a paraprofessional enforcement staff. This system will become part of the City's traffic control system and will bring other benefits in addition to cleaner air.
- .0. a. Begin strategy implementation with existing available
  - o. Phase in the paraprofessional staff.

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ORIGINAL PLAN SCHEDULE
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Demonstrate	Secure funds (\$15 million capital; \$5 million annual for full scale implementation.

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Secure Memorandum of Understanding with the Taxi and Limousine	Police Department indicating support and assistance in implementing this control strategy.
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Expand program for selective ban on cruising to hot sp	streets;
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<sup>8.</sup> Initiate cruising bans on selected streets in midtown.

<sup>9.</sup> Evaluate impact (theoretical prior to ban; measure impact. after implementation).

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ORIGINAL PLAN SCHEDULE

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1. Prepare

- the New York City Bureau of Consumer Affairs stating agreement on the need for and direction for a City-wide parking policy. Planning Commission, the Transportation Administration, the New York City Police Department, the Traffic Department, Secure a Memorandum of Understanding with the New York City the New York City Economic Development Administration, and
- Secure funds (\$1.5 million) for the development of both CBD and City-wide parking policies.
- Develop and adopt a CBD parking policy and establish an agreement with the taxi industry to establish jitney service between Hudson waterfront fringe parking lots and centers of businesses.
- Develop a City-wide parking policy.
- Secure funds (approximately \$15 million) for implementation of both CBD and City-wide parking policies.
- Insure on-street parking regulations are enforced by existing or para-professional staff (Ref. Strategy B-lA).
- Select off-street parking facilities to be eliminated.
- Purchase and close down selected off-street parking facilities (may require City or State legislation to accomplish). Jitney services in operation.
- Evaluate impact of program (requires traffic counts at key locations before and after implementation).
- Secure funds for implementation of City-wide policy.
- Implement city-wide policy.

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3-5: Increase in Express Bus Service; Exclusive	000
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CATEGY B-5:	

plan.	routing
ress bus master	requirements,
Secure funds (\$500,000) to develop an express bus master plan.	Develop a master plan including equipment requirements, routing proposals, impact analysis, etc.
Secure funds (\$50)	Develop a master plan including or proposals, impact analysis, etc.

Secure funds (\$30 million capital; \$15 million annual operating) for implementation.

Order necessary equipment (primarily buses) (new equipment to conform to low emission specifications to be developed as part of Strategy A-7).

Implement strategy with existing equipment. Full implementation.

Secure Memorandum of Understanding. Prepare detailed work plan.

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ORIGINAL PLAN SCHEDULE

Nov. 1, '73 May 1,'74

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ORIGINAL PROG SO EDU

Substitute all necessary legislation to special session of State Legislature and secure memorandim of understanding from New Society that Department of Transportation. Legislation should specify that toll revenues are t be earmarked primarily for furling of transit improvements	
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- . Prepare detailed study and implementation work plan.
  - 3. Secure all necessary agreements.
- . Secure all necessary study and design funds.
- . Prepage alternative traffic plans for borough of Manhattan (see Strategy B-18).
- 5. Secure funds (\$10 million) to design and install toll booths.
- . Investigate bridge and tunnel activity and related local air pollution prior to implementing tolls and after implementation.
  - . Modify bridge facilities.
- . Implement bridge tolls.

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Memorandum of Understanding with Mayor's office, Transportation Administration, Port Authority, major business organizations, supporting strategy and insuring cooperation.	, Transportation	organizations,	
	"s-rendum of Understanding with Mayor's office	Additionation, Port Authority, major business	supporting strategy and insuring cooperation.

- 2. Prepare a detailed study and implementation work plan.
  - Secure funds (\$500,000) for all necessary studies.
- . Investigate regional feasibility including a major attitude survey, etc.
- 5. Full scale implementation.

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FALTERY D-3: After-Hours Delivery to Stores and Office Buildings		Prepare a detailed study work plan.	Secure all necessary funds (\$1 million, including funds for Strategy D-4) for study and demonstration.	Investigate concept; develop alternative scenarios; evaluate feasibility and impact, including all necessary surveys.	Prepare a detailed demonstration work plan.	Implement demonstration. Man	a. Evaluate results of demonstration to establish feasibility. Jan b. Revise if necessary.

++ Strategy D-3 was elevated from a maintenance strategy to a primary strategy by the State on April 17, 1973, but a modified schedule for implementation was never submitted. As a primary strategy implementation must occur as expeditiously as practicable.

Systems
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ORIGINAL PLAN SCHEDULE

Memorandum of Understanding with Metropolitan Transportation	Administration, agreeing to	.egy.
ndum of Understanding with	Authority and the Transportation Administration,	develop and implement this strategy
1. Memoran	Authori	. develop

- 2. Prepare, in cooperation with the Metropolitan Transportation Authority, a detailed study and implementation work plan.
- 1. Secure funds (\$1 million) to develop and initiate a major marketing effort.
- . Evaluate strategies and techniques used by other operating agencies to market public transit.
- 5. Establish best approach for Metropolitan area.
- 6. Trial test marketing procedures.
- . Decision on marketing strategies.
- Secure funds (\$5 million, annually) for new program implementation.
- 9. Prepare marketing materials.
- 10. Implement program
- 1. Periodic evaluation of program impact.

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ORIGINAL PLAN SCHOOL

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- Secure a Memorandum of Understanding from federal Environmental Protection Agency and the Mayor's office supporting program.
- Secure commitment for all necessary funds for start-up (including media development) and demonstration (\$1 million)
- Set up an independent public information and education group to implement the programs described.
- Plan full media coverage; develop programs; develop materials; initiate public information and education effort.
- Prepare a detailed long range implementation work plan.
- Secure full program funding (\$500,000 for first year).
- Implement entire action program.

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COMPLITE	July 1,'73	Apr. 15, '73	Sept. 1,'73	Nov. 1,'73	July 1,'74	Mar. 1,'74	Apr. 1,'74	Ongoing
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	-			Feb. 15,'73. Apr. 15,'73 1. c completed
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	COMPLETE			15,'73
ORIGINAL PLAN SCIENCE	CC			Apr.
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GINAL				15,'7
ORI	BEGIN			Feb.
SIBSIES: C-6: Integration of New York City Bus, and Subway	Systems to Form a Coordinated Grid of Cir-	cumferential-Radial System to Optimize	Coverage	Memorandum of Understanding with the Metropolitan Transporta-
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ORIGINAL PLAN SCHELL

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derstanding wi	Transit Author	of Franchises,	dy, support of
Memorandum of Understanding with the Metropolitan Transporta-	tion Authority (Transit Authority), Transportation Adminis-	tration, Bureau of Franchises, and private transit operators,	on intent of study, support of same and assurance of assistance.

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Investigate problem of integrated transit system for New York City. Design alternative proposals and prepare a set of recommendations for change.

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-	oct. 1,'73	Jan. 1,'74	" action takin	takın
	Jan. 1, '74.	Apr. 1,'74	No action taken	taken
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Prepare a detailed implementation work plan.

Secure funds for implementation, 6

Segin implementation.

Evaluate impact once changes are complete.

Secure Memorandum of Understanding from Tri-State Regions Planning Commission, Economic Development Administration, City Planning Commission, Transportation Administration, and trucking industry to support and assist in a major in gazion and demonstration of truck consolidation.	BEGIN	ional Feb. 15, 73	investi-
	Consolidation of Trucking Activities	Secure Memorandum of Understanding from Tri-State Regional Planning Commission, Economic Development Administration,	City Planning Commission, Transportation Administration, and trucking industry to support and assist in a major investigation and demonstration of truck consolidation.

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<sup>5.</sup> Demonstrate alternatives.

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<sup>7.</sup> Prepare a detailed implementation work plan.

No action taken	Taction taken	required til ure date	required til	required til
Jan. 1,'74 Apr. 1,'74	Jan. 1,'75	Jan. 1,'76	July 1,'76	June 30, '78
Oct. 1,'73 Jan. 1,'74	Apr. 1,'74	Mar. 1,'75	Apr. 1,'76	July 1,'76

<sup>.</sup> Initiate implementation efforts.

<sup>9.</sup> Complete implementation.

<sup>10.</sup> Develop demonstration program.

FATURE C-7: Rehealitation of the Existing New York City Transit System	BEGIN CC:	CCUPLUT
Memorandum of Understanding stating need for and acceptance of program to accelerate rehabilitation of New York City transit system with Mayor's office, City Planning Commission, and Metropolitan Transportation Authority (Transit Authority).	Feb. 15,'73	Apr. 15,'73
Prepare, in cooperation with the Transportation Administration a detailed development and implementation work plan.	Oct. 1,'73	Jan. 1,'74
Complete revisions in the existing regional master transportation plan to reflect environmental (implementation plan) constraints (Tri-State Regional Planning Commission, New York City Planning Commission, Transit Authority).	July 1,'73	July 1,'74
Develop and initiate a funding program to satisfy needs of all necessary modifications.	Apr. 1,'74	July 1,'74
s. Initiate rehabilitation program.	July 1,'74	Ongoing
Secure research and design funds.	Dec. 1,'73	Mar. 1,'74

July 1,'74 . The action taken

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Mar. 1,'74 No action take

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July 1,'74 N: action taken

Jan. 1,'74 No action taker.

Apr. 15,'73 1. completed

Transparation of Off-Street Loading Facilities	ORIGINAL P.	ORIGINAL PLAN SCHEDUL CONPLETE	
Secure Memorandum of Understanding listed under Strategy D-3. Include also Department of Buildings and Bureau of Standards and Appeals.	Feb. 15, 73	Apr. 15'73	action cak
Undertake Garment Center Transportation Study -			
a. Phase I Project C jectives: Task I - Data Acquisition Task II - Analysis and Identification of Problems Task III - Development of Immediate Action Program Task IV - Establish Long Range Issues Task V - Reports	Mar. 1, 73	Mar. 1,'74	o compression of the compression
b. Fhase II and III - tentatively scheduled:	Mar. 1,'75	Mar. 1,'76 1	required t
Evaluate feasibility of off-street loading concept from results of Garment Center Study.	Mar. 1,'74	June 1,'74	cution make
If feasible, then investigate areas throughout City where implementation would be environmentally beneficial.	June 1,'74	Jan. 1,'75	action cake
Decision to proceed with implementation.	Jan. 1,'75	Mar. 1,'75 1	equired t
Implementation.	Mar. 1,'75	Ongoing	

COMPLETE	'73 Apr. 15,'73 action tak n	'73 Oct. 1,'73 coulon tak."	73 Jan. 1,'74 cotion taken	Jan. 1,'74 % edtion takes	July 1,'74 Cation tak	74 July 1, '74 cotion tak	74 July 1,'74 Louion take	74 Oct. 1,'74 cotion taken	4 July 1,'74 % action taken	74 Ongoing as action taken	
BEGIN	Feb. 15,'73	July 1, '73	Oct. 1,'73	July 1,'73	July 1,'73	Jan. 1,'74	Jan. 1,'74	July 1,'74	May 1,'74	July 1,'74	
STRACT ON E-3: Land Use Policies and Development Controls	and City Planning Commission stating intent of strategy and confirming support for and assistance in developing a New York City land use plan.	. Prepare a detailed study and implementation work plan.	. Secure funds (\$2 million) for all necessary studies.	. Establish relationship between land use, urban density, transit demand and air quality.	. Develop a detailed land use plan for the Metropolitan area (crash program).	. Develop and propose new zoning regulations.	. Develop guidelines for analysis of land use and air quality.	. Prepare a cost-benefit analysis of land use controls.	Secure funds (\$500,000) for a land use environmental review board.	. Institute the land use environmental review board with enforcement powers.	
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. Secure Memorandum of Understanding from Mayor's Office,	Transportation Administration, Traffic Department, and	ment indicating	and confirming support.
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Apr. 15,'73

Feb. 15, '73

ORIGINAL PLAN SCHOOL

BEGIN

- Prepare a detailed implementation work plan.
- Secure funds (\$500,000) to prepare and organize for implementation, conduct surveys, analyze impact, etc.
- i. Establish implementation zones and select best strategy for implementation.
- 5. Prepare a cost/Demefit analysis on all proposals.
- . Survey public to determine reaction to proposals.
- 7. Evaluate effectiveness of primary strategies in meeting
  - projected reductions. Demonstrate feasibility if strategy is needed.

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- Conduct major public information briefing on impact of strategy, the response expected of the public, etc.
- 10. Implement ctrategy if required.

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<sup>3.</sup> Feasibility study.

## 6. Implement.

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Apr. 1, '74	July 1, '74	::	To action take	take
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July 1,'74	Jan. 1,'75	÷.	To action taken	take
July 1,'75.	Ongoing	2. 4	in the date	red ti

<sup>4.</sup> Decision to implement.

<sup>5.</sup> Develop legislative package.

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Prepare study work plan.

Jan. 1,'75 % action taken	Apr. 1,'74	
		Jan. 1,'74 A

<sup>.</sup> Determine extent and impact of changes required.

<sup>4.</sup> Decision to implement.

<sup>5.</sup> Implement.

Secure funds to prepare major evaluation of transit funding.

Initiate evaluation of transit financing.

Develop legislation, if necessary.

Transit Fure Teamsod or "Free" Transit Fure

Propure detailed study work plan.

5. Decision on strategy for financing transit operations.

6. Decision to Implement.

7. Implement.

The state of Mail for Transporting Commodities		OLIGINAL PLATE EL LITE				
Socure Memorandum of Understanding.		BEGIN July 1,'73	Oct. 1, '73	×:	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	:
Prepare detailed study work plan.		Oct. 1,'73	Jan. 1,'74	NC	saionker	
Secure Junds for study and demonstration.	•	Jan. 1,'74	July 1,'74	No	No :ction take:	
Investigate potential for existing rail facilities and feasibility of new facilities.	-:	July 1,'74	Jan. 1,'75	S.	ction take:	
Cost-benefit analysis.		Oct. 1,'74	Jan. 1,'75	N	No. siguired til	
Select demonstration project.		Jan. 1. 175	July 1, '75	No.	73 0	
Prepare detailed demonstration work plan.		July 1, '75	Oct. 1,'75	Nc.	No. 'cquired ti	
Implement demonstration.	•	oct. 1,'75	Jan. 1,'77. Not required for the Cate	Not	required to	
Evaluate demonstration and decide whether to implement.		Jan. 1,'77	Apr. 1,177	No S	No required ti.	
		Apr. 1,'77	Ongoing	No	No. required ti	

Implement.

CONPLET.	Jan. 1,'74	Apr. 1,'74	July 1,'74	Jan. 1,'75	July 1,'75	July 1,'76	Oct. 1,'76	Jan. 1,'77	Apr. 1,'77
ORIGINAL PLAN SCAL NO BEGIN COMPI	Oct. 1,'73	Jan. 1, '74'	Apr. 1,'74	July 1,'74	Jan. 1,'75	July 1,'75	July 1,'76	oct. 1,'76	Jan. 1,'77

Improvements in Goods Movement Technology and Management Systems

1201201 0-2:

Secure Memorandum of Understanding.

Prepare study work plan.

Secure funds for study and demonstration.

Investigate and evaluate alternatives.

Submit proposals for change.

Demonstrate alternatives.

Decision to implement.

Prepare implementation work plan.

Secure funds for implementation.

Segin implementation.

OCT. SEGIN July 1, '73 Oct. 1, '74 July 1, '74 July 1, '75 July 1, '75 July 1, '75 July 1, '75 July 1, '75	PLAN COUNT.	Out. 1,'73 :tion tab	Jan. 1,'74 N. action tab	July 1,'74 % action	Jan. 1,'75 No action tak	Jan. 1,'75 No.	N 27',1 Ylut,	Oct. 1,'75 N	Jan. 1,'77. N-	Apr. 1,'77 No required	Ongoing
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Investigate potential for existing marine facilities and feasibility of facilities.

Secure funds for study and demonstration.

The Distinguis of Marine Transit Systems

Jecure memorranda of understanding.

Prepure detailed study work plan.

Evaluate demonstration and decide whether to implement.

.0. Implement.

Prepare detailed demonstration work plan.

Implement demonstration.

Select demonstration project.

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Cost-benefit analysis.

(1)	University Liaison		ORIGINAL PL	AX SQUEDE:
		,	BEGIN.	GIN. COUPLITE
1.	Secure Memorandum of Understanding.		Apr. 1,'73	July 1,'73
2.	Prepare detailed study work plan.	.1.	July 1,'73	oct. 1,'73
ë.	Secure Agency commitment to participate in continuing cooperative effort		Feb. 15,'73	July 1,'73
4.	Develop and evaluate a list of possible work programs.		July 1,'73	oct. 1,'73
5.	Secure all necessary funds		. Oct. 1,'73	Jan. 1,'74
9	Establish joint city/university programs.		Oct. 1,'73	Jan. 1,'74

7. Initiate programs.

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		ORIGINAL PLAN SON	N. Still Still	-11
FIS	STR. 1837 E-2: Special Truck Design	BEGIN	COMPLETE	7.
1:	Prepare detailed work plan.	Oct. 1,'73	Jan.1,'74	
2.	Secure study and demonstration funds.	Jan. 1,'74	Apr. 1,'74	To action tak n
3.	Secure assistance and support from vehicle manufacturers.	Jan.1,'74	July 1,'74	N action taken
4	Investigate needs of freight operators, special vehicles now being used, existing vehicle population.	Apr. 1,'74	Jan. 1,'75	N. action tak'n
5.	Define vehicle requirements for CBD operations and develop specifications for same.	Oct. 1,'74	Apr. 1,'75	For required til
.9	Design and fabricate special demonstration vehicles.	Jan. 1,'75	Jan. 1,'76	r required
7.	Demonstrate fleet operation.	Jan. 1,'76	Jan. 1,'77	70 61 61 61 61 61 61 61 61 61 61 61 61 61
8	Evaluate success of demonstrated specialty vehicles.	Jan. 1,'77	Apr. 1,'77	podnikaci
9.	Decision on future action.	Jan. 1,'77	Apr. 1,'77	required

#### PLAINTIFFS! ORDER TO SHOW CAUSE

#### DATED JULY 28 1975

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

			Defendants.	)	FOR PRELIMINARY INJUNCTION
MALCOLM W	ILSON,	et al.	,	)	ORDER TO SHOW CAUSE
	v.			)	
			Plaintiffs,	)	77 CIV. 4500 (KID)
FRIENDS O	F THE	EARTH,	et al.,	)	74 Civ. 4500 (KTD)

Upon a reading of the affidavit of Brian T. Ketcham, sworn to on the 29th of July, 1975, the affidavit of David Schoenbrod, sworn to on the 29th of July, 1975, a copy of the complaint filed in this action on October 11, 1974, and a copy of the opinion and order of the court dated December 16, 1974, defendants are hereby

ORDERED to show cause at a term of this court for the hearing of motions to be held in Room/506, United States Courthouse, Foley quare in the County, City and State of New York on the 30 day of 300 , 1975, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure:

(a) preliminarily enjoining and restraining defendants from increasing the transit fare from 35 cents (\$.35) until such time as the Transportation Control Plan is fully implemented; and (b) preliminary enjoining and ordering defendants pending a final desposition of this action to implement the existing Transportation Control Plan.

and granting such other and further relief as this court may deem appropriate under the circumstances, all on the grounds that defendants, as is set forth more fully in the annexed affidavits and the complaint herein are in violation of the Clean Air Act, 42 U.S.C. §1857 et seq., regulations thereunder and the Transportation Control Plan adopted pursuant thereto, and it be further

ORDERED to show cause why the complaint should not be amended to add the New York City Transit Authority and David L. Yunich in his official capacity as chairman of the New York City Transit Authority as parties defendants hereto pursuant to Federal Rules of Civil Procedure, Rule 21 and directing the issuance and service of process upon them on that the ground that the said parties are necessary for the granting of full relief herein, that the said parties are subject to the jurisdiction of this court and can be made parties defendant without depriving the court of jurisdiction.

of a copy of this order to show cause and the papers on which it is based by delivery thereof to the offices of defendants or to the attorneys appearing for them, on or before 1975 at

10 4 m. shall be sufficient.

Dated: New York, New York

July 29, 1975

Lecued at.

United States District Judge

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,	)	
Plaintiffs,	)	74 Civ. 4500 (KTD
v.	)	
MALCOLM WILSON, et al.,	)	AFFIDAVIT
Defendants.	)	

STATE OF NEW YORK )
SS:
COUNTY OF NEW YORK)

David Schoenbrod, being duly sworn, deposes and says:

I am an attorney of record for plaintiffs herein and in that capacity am fully familiar with the facts of the case.

I make this affidavit in support of plaintiffs' application for an order to show cause and for a preliminary injunction.

Upon plaintiffs' earlier motion for preliminary injunction this court stayed its hand, in its discretion, in the belief that defendants were proceeding in good faith to promptly revise the Transportation Control Plan and were not then positively taking steps to worsen air quality, and because of considerations of judicial economy warranting the exercise of the court's discretion.

Each of these assumptions has, with time, proven incorrect. It does not appear that defendants are proceeding in good faith. In more than a year's time, they have been unable to reach agreement and are virtually stalemated on the four key strategies for pollution abatement. Moreover, defendants are

about to raise transit fares, an action which experts and City officials alike agree will immediately and substantially worsen air quality.

Defendants justify their a sons by the current fiscal plight of the City. Yet while defendant prepare to take action adverse to air quality, they continue to ignore other, related revenue actions specifically designed to reduce air pollution which have been mandated by law pursuant to the Transportation Control Plan.

Under these circumstances, and on this record of failure and inaction, the court should now be convinced that it has no alternative but to invoke its equitable powers. Accordingly, plaintiffs seek a preliminary injunction to maintain the status quo by enjoining any fare increase until such time as the plan is fully implemented and to mandate full implementation of the plan.

Plaintiffs commenced this action by filing their Complaint on or about October 11, 1974 (Complaint annexed hereto as Exhibit "A"). Service was effected on all defendants by stipulation or by actual service. The complaint sought injunctive, declaratory and other relief to enforce the New York City Metropolitan Area Air Quality Implementation Plan Transportation Controls for the New York City Metropolitan Area, (Heretofore and hereinafter the "Transportation Control Plan"), which had been approved pursuant to Section 110 of the Clean Air Act, 42 U.S.C. §1857c-5. Jurisdiction of the court to entertain such an action is set forth in the Clean Air Act, 42 U.S.C. §1857h-2(a)(1).

On or about October 11, 1974, plaintiffs moved for a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure. Plaintiffs sought a mandatory

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injunction requiring defendants to take action to comply with the Transportation Control Plan.

On October 18, 1974, the City defendants filed papers in opposition in which the City defendants argued that they were then acting in good faith to revise the Transportation Control Plan and that as a result relief should not be granted. Robert A. Low, Administrator of the New York City Environmental Protection Administration, stated in his affidavit in opposition that:

- "9. The City and State have been acting in good faith to expeditiously revise the Transportation Controls. Within several months, a new set of controls will become part of the New York State Air Quality Implementation Plan.
- "10. It would therefore be most and inappropriate to require the City to take the actions requested by plaintiffs." (Affidavit by Robert A. Low, dated October 18, 1974.)

On December 16, 1974, this court filed an opinion and order denying plaintiffs' motion for a preliminary injunction, but granting plaintiffs leave to renew its application at a later date. (Opinion annexed hereto as Exhibit "B".) In so ruling, the court found that plaintiffs had adequately sustained their burden for a hearing on the issuance of a preliminary injunction, but that the court would nevertheless exercise its descretion to refrain from issuing a preliminary injunction because of potential difficulties in continuous court supervision of the Transportation Control Plan and because it was not then clear whether or not the U.S. Environmental Protection Agency would itself undertake enforcement actions. The latter consideration was based on a letter dated November 7, 1974, from the U.S. Environmental Protection Agency Regional Administrator to the Commissioner of the New York State Department of Environmental Conservation in which the Regional

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Administrator stated that unless an adequate revision was proposed and submitted to the U.S. Environmental Protection Agency for approval by December 20, 1974, the U.S. Environmental Protection Agency would commence independent enforcement actions.

It is now approaching a year since the City defendants represented to the court that a revision would be adopted "within several months" and more than seven months since this court entered its decision and order. In that time defendants have failed to adopt the promised revised plan. Moreover, during this period there was no apparent enforcement of the most important strategies in the existing Transportation Control Plan and the U.S. Environmental Protection Agency and State and City agencies appear to be stalemated over the key issues in the current plan: reduction of parking, institution of tolls on the East River bridges, after hour goods delivery and the taxi cruise ban.

During the same period, the U.S. Environmental Protection Agency also failed to order action as to these key strategies.

Now, in the context of total failure by all agencies to perform their statutory and administrative duties, defendants announced their intention to raise the transit fare by a substantial margin. Such an action will have an immediate, detrimental and irrevocable effect on transit ridership and, hence, public health. Reliable estimates indicate that as a direct result of the transit fare increase, the City will suffer a 15% to 20% increase in carbon monoxide levels. Deleterous health effects in New York City alone of current levels of pollutions have been calculated in hundreds of millions and billions of dollars annually. As is more fully set forth in the accompanying affidavit by Brian T. Ketcham, P.E., the proposed transit fare increase will cause an immediate loss in ridership in excess of 10 percent, which will result in a substantial increase in the use of private automobiles. Yet it is the purpose of the Plan to reduce the use -4-

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of such vehicles in Manhattan by 50 percent.

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Defendants' actions are not merely neutral. Their actions will work contrary to the Plan, will positively and substantially increase air pollution, and will worsen the severe adverse health effects of existing air pollution at a time when, despite claims for good faith, defendants are plainly in violation of the Clean Air Act.

Moreover, there are fiscal actions and alternatives which defendants should be taking under the Clean Air Act which are not only consistent with air quality but are in fact mandated by Transportation Control Plan. Enforcement of the existing Transportation Control Plan strategies would generate more revenue for the City of New York than is anticipated by the transit fare increase. The mandated and approved strategy of placing tolls on all East and Harlem River Bridges would alone generate a net annual income of \$175 million assuming toll rates similar to those recently imposed by the Port Authority. These tolls exceed the total income from a \$.15 fare increase by almost \$9 million.

The existing Trae portation Control Plan also includes suggested revenue producing strategies which would also reduce air pollution. These include such strategies as a parking tax and vehicle use fees. If these suggestions were adopted the City would receive an additional \$180 million in revenue.

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Current hysteria should not be ind the Court to the real public health costs of the transit fare increase, nor to its certain effect on the ultimate ability of the City to devise or implement realistic air pollution abatement strategies. Precipitous

action is particularly unwarranted in light of the fact that there are strategies consistent with air pollution abatement, required by existing law, which would raise as much or more revenue for the City of New York.

Under these circumstances, defendants must be halted from precipitous actions which are contrary to the Transportation Control Plan and which will defeat the Plan, and the existing Transportation Control Plan immediately enforced.

The notice, complaint, and summons were directed to David Yunich, as Chairman of the Metropolitan Transportation Authority (MTA) although the notice and complaint both reference duties under the Plan to be carried out by the MTA's sister corporation, the New York City Transportation Authority. (TA) Under New York law, the chairman and board of the TA are to be the chairman and board of the MTA.

The error in omitting David Yunich as Chairman of the TA, was recognized by both the TA and MTA. Mr. Yunich was represented throughout by John A. deRoos, in his capacity as General Counsel of the TA.

In order to correct this inadvertence, Plaintiffs move to join as parties David L. Yunich, in his capacity as Chairman of the TA and the TA, although they have in reality participated in this litigation from the outset. The addition is necessary at this time to allow the court to fully protect its jurisdiction to enforce the Clean Air Act.

WHEREFORE, the relief sought by Plaintiffs in the Order to Show Cause should be granted in all respects.

Sworn to before me this

28th day of July, 1975.

CAROL ANN HINE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4512712
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1977

David Schoenbrod

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### AFFIDAVIT OF BRIAN T. KETCHAM, P. E. DATED JULY 28, 1975

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,	)	
Plaintiffs, v.	)	7 <sup>h</sup> Civ. 4500 (KTD)
MALCOIM WILMON, et al.	)	
Defendants	)	AFFIDAVIT
STATE OF NEW YORK )		
COUNTY OF NEW YORK )		

BRIAN T. KETCHAM, P.E., being duly sworn, deposes and say.

1. Qualifications

I am currently employed as Staff Engineer for Citizens for Clean Air, Inc. ("CCA"), a non-profit environmental organization, with offices at 25 Broad Street, New York, New York 10005. In this capacity, I am responsible for investigating and reporting on the implementation and enforcement of the New York City Transportation Control Plan.

I hold a B.S. degree in Mechanical Engineering from Case Institute of Technology and have completed three years of graduate study in Mechanical Engineering and Urban and Transportation Planning at the Massachusetts Institute of Technology. I am a Professional Engineer licensed in the State of New York with thirteen years of professional experience in the design and testing of automotive pollution control equipment, of advanced automotive power plants, and in the planning and implementation of strategies to alleviate mobile source air pollution problems.

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Before joining CCA. I worked for more than four years in the New York City Department of Air Mesources, developing a program to reduce vehicular-related air pollution in the City: first, as Director of the Bureau of Motor Vehicle Pollution Control, from July 1969, to December, 1971, then as Director of the Office of Planning and Implementation, New York City Department of Air Resources from January, 1972, to November, 1973. As Director of these offices, I was responsible for developing the New York City Transportation Control Plan and the schedule for implementation in consultation with New York State Department of Environmental Conservation. I directed the preparation of the Plan and helpe pare and implement technical aspects of the Taxi and Limousine Commission administrative code designated to mitigate the impact of taxicab operation on the City's air quality. In recognition of this role in developing the City's program for abating vehicle related air pollution, I was awarded the 1973 New York City Merit Award.

#### 2. Summary

In following sections of the affidavit, I reach the following conclusion:

The imminent increase in transit fares to \$.50 will reduce transit ridership by at least ten percent and will in the long-run be counter-productive to transit revenues (§3).

The increase in transit fares would significantly increase auto travel and, due to the added congestion caused, will effect an even larger increase in air pollution ( $\S^4$ ).

The increase in transit fares will have a substantial effect on public health and welfare including increased mortality and illness, by exacerbating the existing large violations of national health standards for air pollution, which the National Academy of Sciences estimates to cause from \$700,000,000 to \$1,500,000,000 of damage per year in New York City (§5).

Defendants' failure to implement the existing Transportation Control Plan, particularly the key strategies designed to sharply reduce vehicle use in Manhattan, has already caused substantial increases in air pollution during the past two years (§6).

A fare increase imposed t fore full plan implementation will have a particularly harmful effect on both public health and the ultimate success of the plan because the plan depends on a sharp reduction of vehicle use in Manhattan and the key strategies to limit vehicle use are not in force (§7).

The Plan mandates and recommends measures that would not only reduce air pollution, but also produce far more revenue than the fare increase (§8).

## 3. The Increased Transit Fare Would Reduce Transit Ridership.

Defendants have stated their intention to increase fares on New York City Transit Authority subways and buses.

New York Times, July 26, 1975 at page 1. An increase to \$.45 or \$.50 is contemplated within a matter of days with a subsequent increase to \$.60 in 1976. In comparison to the current fare of \$.35, a fare of \$.50 constitutes a 43% increase and a fare of \$.60 constitutes a 71% increase.

An increase in transit fares to \$.50 would reduce transit ridership by at least ten percent (10%). The conclusion that fare hikes produce substantial losses in ridership is shared by many authorities, including the Transportation Control Plan itself:

"Unusually large decreases in ridership generally occur immediately after a fare increase." Transportation Control Plan 3-2. See also, pages 1.2.2, 3.1.

Others who have reached the same conclusion are Citizens
Budget Commission ("Financing Transit in New York City"), MTA
Board Member and former New York City Transportation Administrator

Constantine Sidamon-Eristoff (Nov. 29, 1973 statement to New York City Board of Estimate), and former City Environmental Protection Administration Administrator and now Municipal Assistance Corporation Executive Director Herbert Elish (May 23, 1973 statement before the Institute for Public Transportation.) Mr. Elish concluded that:

"It is well known, however, that raising the fare on mass transit systems, particularly to the extent suggested for next year [to 50 cents], has exactly the opposite effect ... that is, it causes commuters to desert mass transit and take to their cars, the larger the fare increase, the larger the loss of ridership."

A standard industry figure for the effect of fare changes on ridership is that a 1% change in transit fare causes a 0.33% change in transit ridership (Interstate Obmmerce Commission Draft Environmental Impact Statement, "Illinois Central Gulf Railroad Company -- Electric Commuter Train Fares" (Docket Nc. 35889) (November, 1974); and Office of Technology Assessment Report, "Energy, The Economy, and Mass Transit," June 1975.)\*
Based upon this three to one relationship, the impact of the proposed transit fare increase on ridership is as follows:

50 cent Transit Fare, 42.9 percent increase in fare equals a

14.3 percent reduction in ridership.

The Metropolitan Transportation Authority's "1974 Annual Report" shows ridership for 1974 as follows:

 Subways
 1,099,970,000

 TA Buses
 395,073,000

 MaBSTOA Buses
 346,279,000

TOTAL 1,841,322,000

in 1969 the City of Chicage raised bus and subway fares from 25 cents to 40 cents and suffered a 14 percent drop in subway riders and a 19 percent drop in bus riders as a result (Citizens Budget Commission Report, "Financing Transit in New York City", p. 31).

The Metropolitan Transportation Authority further assumes that transit ridership will drop by five percent in 1975 and again in 1976 due to the depressed state of the economy in New York City, a continuing decline in jobs, etc. This yields a baseline for 1976 of approximately 1,661,793,000 paid bus and subway trips.

A ten percent reduction from this base would represent a further loss of ridership of more than 166 million trips.

My conclusion that a fare increase to 50 cents would produce at least a 10 percent loss in ridership is conservative in light of the analysis prepared by the New York State Department of Transportation (State DOT) under the State Public Transportation Operating Assistance Program. The study developed a series of mathematical stepwise multiple regression models to determine the precise effect of fare and service changes on transit ridership and to forecast the impact of alternative fare and service policies on ridership.

"This analysis has shown that ridership declines have been associated with (1) increases in average fare and (2) decreases in service availability." (p. 28)

In their historical assessment, State DOT found that:

"... each 10% increase in fare has brought about a 2.5% decrease in ridership in the New York City bus and subway systems." (p. 28)

"... each 10% decline in service has historically brought about a 5.5% decrease in ridership in New York City systems." (p. 30)

Using its mathematical model, the State DOT has foreeast the impact of changes in fare and service on transit ridership. Assuming the 1973 fare and service levels are maintained. transit ridership is expected to decline slightly over the 1975-1980 period. If bus and subway fares were raised to 60 cents (now proposed for 1976) transit usage would fall by 27.7%. Similarly, if levels of transit service (defined as vehicle-miles) are cut 50% over the five-year period studied, ridership was projected to full by 39.5%. Service cutbacks are underway now.

State DOT concluded that any potential revenue increases due to an increase in transit fares would be reduced by lost ridership; that transit fare increases are counter-productive; and that

"Short of continued service cutbacks, transit deficits can only be held down ... through responsible actions of all government levels to reduce costs and increase service efficiency." (p. 33).

In conclusion, State DOT finds that

"Increases in fares are generally counter-productive, simply driving away more riders, and necessitating further service cutbacks to make up for lost revenues." (p. 3)

4. Impact of a Transit Fare Increase on Auto Travel and Air Pollution.

The increase in transit fares will produce a substantial increase in air pollution by diverting transit riders to privately-owned passenger automobiles. This conclusion is supported by measurements made by the Metropolitan Transportation Authority and the New York City Department of Traffic immediately before and after the 5 cent fare increase in January, 1972, which showed:

A loss in transit ridership of 64 million trips per year; and

an increase in 39,459 vehicles crossing per day over but some of the Harlem and East River bridges and tunnels.

The immediate effect of this partial count of increased vehicle use produced the following increases in vehicle emissions within the Manhattan Central Business District in 1972:

125,000 pounds per day of CO
11,500 pounds per day of HC
3,000 pounds per day of NO

Comparing these figures with ambient air quality levels and total emissions one discovers that, on the basis of these figures, there was an additional five percent of carbon monoxide (CO), 4.5 percent additional hydrocarbons (HC), and 4 percent additional oxides of nitrogen (NO $_{\rm X}$ ) being added to the Manhattan Central Business District each 24-hour business day, primarily attributable to the five-cent fare increase.

These figures severely underestimate the effect of the five-cent fare increase because (a) they represent only some of the trips to and from Manhattan and none of the intra-Manhattan trips, (b) the extra-traffic and the pollution are concentrated during the business day, and (c) "the incremental traffic added to the traffic-streams -- which is directly attributable to the fare increase -- has an environmental impact which worsens with each added vehicle. In other words, each added vehicle contributes more pollution than the previous one locause of the synergism between congestion, vehicle speed and pollution."

Transportation Control Plan at 3-2.

In fact, the five cent fare increase produced dramatic increases in air pollution. Measurements of carbon monoxide at the 59th Street bridge showed a 40 percent increase from 1971 to 1972. More important, the percentage of 8-hour average readings exceeding 9 ppm, increased from 88 percent of the time to 98 percent. Federal health standards prohibit this standard being exceeded more than once per year.

The imminent 15 cent fare increase will have a far greater impact upon air pollution than the past five cent increase and, as such, will increase carbon monoxide pollution by an additional 15 to 20 percent.

# The Fare Increase Will Cause Severe Adverse Effects on Public Health and Welfare.

Substantial adverse health effects are associated with each of the motor vehicle pollutants. Carbon monoxide (CO) affects humans by combining with hemoglobin in the blood stream displacing the supply of oxygen being carried to the body tissues. In high concentrations, such as exposure to raw auto exhaust, carbon monoxide's poisoning is rapid and deadly. But even at lower concentrations which are not fatal, carbon monoxide exposure can cause dizziness, headaches, nausea, and general fatigue, impairment of memory, and loss of muscular control. Carbon monoxide can also harm pregnant women and reduce the size of babies at birth. In a Los Angeles study, an increase in death . rates occurred on days of nighest atmospheric carbon monoxide concentrations. In another study there, persons with heart conditions showed a marked increase in susceptibility to the painful heart disease, angina pectoris, after driving in freeway traffic for 90 minutes.

Photochemical oxidants, when present in atmospheric concentrations equal to or less than those now occurring in New York are associated with increased frequency of asthma attacks and eye irritation.

Atmospheric concentrations of nitrogen dioxide have been associated with a greater incidence of acute bronchitis in infants and school children and other acute respiratory disease in adults and children.

Levels of carbon monoxide, photochemical oxidants, and nitrogen dioxide in the New York City atmosphere, as measured by the New York City Department of Air Resources, are substantially in excess of the national primary air standards promulgated under Section 109 of the Clean Air Act to protect human health.

42 U.S.C. §1857c-4.

The economic cost within New York City alone of injury to public health, vegetation, materials and property due to automotive-related air pollution has been estimated by the National Academy of Sciences to range in current annual cost from a minimum of \$700,000,000 to over \$1,500,000,000. Unhealthy ambient concentrations of vehicle-generated air pollution, in terms of carbon monoxide, hydrocarbons, nitrogen-oxides, suspended particulates, and photochemical smog are directly linked to transportation patterns in the area. [Transportation Control Pian, 1.1, 1.2].

A fare hike will have other severe effects on public health and welfare, according to the Citizens Budget Commission report, "Financing Transit in New York" at 3 (Feb. 1971):

"A transit fare increase produces harmful financial, economic, social and other effects. As the number of passengers declines, further fare increases produce lesser revenue increments, and ever higher fares are required to provide needed financing.

"A decline in mass transit riding is economically harmful to the City at large, and particularly to the vital retail economy of the City. It is the discretionary riding of consumers and shoppers which generally tends to fall off most sharply when fares rise. This affects not only the larger stores in the Manhattan central business district reached by subway, but also the smaller stores in numerous retail centers throughout the City, reached by bus. Fare increases also have an indirect impact on all business, since they tend to be passed on to employers in the form of increased labor costs. A transit fare increase becomes, in effect, an indirect business cost.

"The impact of rising fares is not merely economic, but social. Fare increases have the sharpest impact upon those of lowest income, both in their journey to work or in their trips for shopping, recreation, and other purposes.

"Another indirect effect of a fare increase is that it encourages some transit riders to use autos, thus increasing congestion, air pollution and other problems. Even a relatively small number of people shifting to autos produces significant auto traffic effects." (Emphasis added).

# 6. A Fare Increase Will Compound the Increases In Air Pollution Caused By Fallure to Implement the Plan.

Since New York adopted its Transportation Control Plan in April, 1973, carbon monoxide and photochemical oxidants both generated by vehicles, have grown worse. For instance, as the graph, attached as Exhibit A, illustrates, carbon monoxide levels measured by the New York City Department of Air Resources at 45th Street and Lexington Avenue have continued to rise since the last transit fare increase despite the fact that allegedly clean new cars have been rapidly displacing older, assumedly dirtier ones.

This decrease in air quality due to increased vehicle travel would have been prevented by timely and full implementation of the Plan. The Plan was designed to achieve a 50 percent reduction in passenger vehicle miles traveled in the central business district. E.g., Transportation Control Plan at 10-5. Instead, vehicle entries into Manhattan have grown by 2-3 percent per year, according to the New York City Department of Traffic.

That vehicle miles traveled have increased continuously, rather than decreased sharply, is due to the continuing failure to implement the strategies in the Plan chiefly designed to divert travelers from private cars to public transportation. The Transportation Control Plan contains 12 strategies for which It is the primary responsibility of the state and city to implement.

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Eight\* of these strategies have been the subject of enforcement orders by the U. S. Environmental Protection Agency. Nevertheless, EPA's orders require less than the Plan requires and, moreover, it appears that defendants are not acting to fully comply with these orders. Of these eight strategies, only two -- inspection and maintenance and traffic management -- have the potential for significant impact. Even if fully implemented, these strategies cannot produce significant impacts for several years because of lead-time requirements.

been neither the subject of enforcement orders nor action. These strategies are chiefly responsible for achieving the critical goal of the Plan to decrease automotive traffic in Manhattan. In particular the Plan places heavy emphasis on the relationship between passenger car use and parking capacity, calling for major reduction in parking to produce a 50% reduction in passenger car use during the work day.

Emission inspection of cars, trucks and taxicabs, mechanic training, retrofit of trucks, enforcement of existing traffic regulations, traffic management and increase in express bus services.

Central Business District parking restraints, reduction in taxi equising, tolls on East and Harlem River Bridges and night-time freight movement.

7. A Fare Increase Imposed Before Full Plan Implementation Will Have Particularly Devastating Effects on Both the Ultimate Success of the Plan and Public Health.

The Pian depends upon a finely-tuned mixture of strategies including incentives to mass transit use and disincentives to automobile travel, to accomplish the goal of a 50 percent reduction in passenger car travel in the central business district. Their success depends on their application "in concert." Transportation Control Plan at 10-2. See, also, U.S. Congress, Office of Technology Assessment, "Energy, The Economy, and Mass Transit."

The drafters of the plan were aware of the disruptive effect that a fare increase would have on the goal of reducing traffic in Manhattan. E.g., Transportation Control Plan at 1.2.2, 2.1, 3.1, 3.2, 7.6.2. Once the plan was fully implemented, however, strategies such as reductions in parking availability and bridge tolls would reduce the adverse effects of small additional increases in transit fares. The drafters of the plan assumed, however, that the plan would be fully implemented before any such increases since then-Mayor Lindsay was proposing fare reductions and since the plan called for rapid implementation.

The imminent fare increase will thus have particularly severe results since the strategies in the plan designed to discourage automobile traffic are not yet in force.

These adverse effects will last well beyond such time, if ever, when the plan is fully implemented (a) since the plan will then have to accomplish a large decrease in Manhattan traffic before even the status quo of 1973 is reached and (b) transit ridership, once lost, is difficult to recoup.

Even if the plan were fully implemented, a fare increase at the upper-range of the increases being discussed would permanently disrupt the plan. According to then-City Environmental Protection Administration Administrator and now Executive Director of the Municipal Assistance Corporation Elish:

"It seems clear that a fare rise on the subways to 55 or 60 cents would have such a major impact on traffic and ridership patterns as to jeopardize seriously the achievement of federal clean air standards under the implementation plan. Therefore, a strong argument could be made that the fare increase actually represented a revision to the implementation plan.

"However, such a revision cannot be made without public hearing, followed by approval by the Federal Environmental Protection [Agency] Administrator. Inasmuch as achievement of the clean air standards by the approved deadline would now be highly unlikely, the Administrator would surely declare the implementation plan inadequate under the terms of the Clean Air Act. This would mean either rollback of the fare increase, or the imposition of drastic alternative strategies previously rejected as too disruptive from a social, economic or technical point of view. These alternative strategies might include a total ban on private cars in Manhattan. a \$1 billion program to install pollution control devices on all cars in the metropolitan region, and even more restrictions on taxi and truck operation.

"Failure to produce an acceptable version of the implementation plan would invite Federal intervention on a large scale into New York City affairs." May 23, 1973 Statement before the Institute for Public Transportation.

8. The Plan Mandates and Recommends Measures That Would Produce Far More Revenue Than A Fare Increase.

The revenue produced by a fare increase would be offset by the losses due to decreases in ridership of at least 10 percent. Assuming a loss in ridership of 10 percent (166 million fares), the net increase in revenues from a fare increase to 50 cents would be \$166,180,000, calculated as follows:

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		Approximate Revenues for FY 1976
50 cents x 1,495,614,000	F2	\$747,807,000
35 cents x 1,661,793,000	-	581,627,000
Net Increase		\$166,180,000

The Plan itself recommends measures to raise \$821 million in added revenues to subs ... mass transit. Transportation Control Plan at B-22 to -24, attached as Exhibit B.

	Annual Revenues
1. Federal Highway Trust Fund	\$178,000,000
C. CED Parking Tax	30,000,000
3. Off-Street Parking Tax	150,000.000
h. East and Harlem River Vehicle	200,000,000
5. Port Authority Toll	113,000,000
6. HEW Welfare Substdy	
Total	\$821,000,000

Of these recommendations, only the increases in Port Authority tolls have been implemented, and then only by a modest amount.

One of these measures, tolls on the East and Harlem River Bridges, actually mandated by the plan, should have been implemented by now and would raise \$200,000,000,\*/ which is significantly more than a fare increase.

Another set of measures, taxes on parking, is one way of implementing the plan strategy to reduce parking. This

<sup>\*</sup> If tolls were imposed equal to those on the Hudson River bridges, the revenue produced would be \$175,000,000.

strategy was also to be implemented by now and would produce \$180 million per year, again more than a fare increase.

Another plan strategy would increase transit "revenues" by reducing operating costs. In New York City, this can be done by taking actions to expedite the movement of buses.

As noted in New York State Department of Transportation Report, "Public Transportation Operating Assistance: Evaluations and Options" (February 1, 1975):

"Large-city operation appears to be more expensive to operate on a per-mile basis primarily because of slower operating speeds caused by big-city traffic congestion.(p. 33)."

A major reduction in Manhattan congestion is a primary goal of the Transportation Control Plan implementation. Thus, prompt implementation of all Transportation Control Plan strategies will help to keep transit operating costs low and thereby help to avoid a transit fare increase.

#### 9. Conclusion.

Defendants have failed to implement the Transportation Control Plan, particularly the key strategies designed to reduce sharply vehicle use in the central business district o Manuartan. Instead, such vehicle use has increased since the adoption of the plan causing significant increases in the violations of the federal health standards for air pollution. Defendants would now further increase air pollution and vehicle use in Manhattan by increasing subway fares 43 percent immediately and 71 percent in 1976. Such an action would seriously undermine

the plan, even if it were fully implemented. But, taking this action before the key plan strategies to limit vehicle use in Manhattan are in force would have a particularly devastating impact on public health and ultimate success of the plan, if ever implemented. Defendants' actions, taken together, produce effects opposite to implementing the Transportation Control Plan.

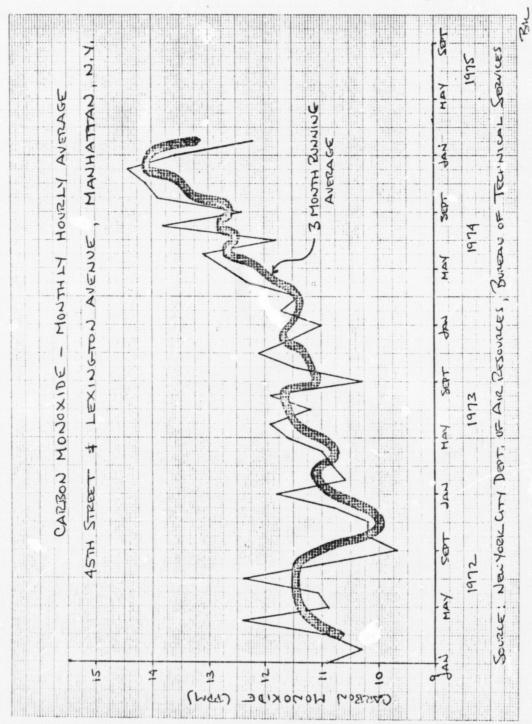
Brion T. Retchar, P.E.

Sworn to before me this 28th day of July, 1975

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Notary Public, State of Seas Yard No. 31-1511471 Qualified in New York County Commission Expires March 31, 1977



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Exhibit A

# New York City Metropolitan Area Air Quality Implementation Plan Transportation Controls



**April**, 1973

Possible Subsidy Package for the New York City Transit System(1) (May require implementation of Secondary Stage strategies)

octategie:	S)
Source	
1. Federal Highway Trust Fund (2)	Annual Revenue
2. CBD Parking Fees (3)	\$178,000,000
3. Off-Street Parking Tax (4)	30,000,000
	150,000,000
<ol> <li>East and Harlem Fiver Vehicle Tolls (5)</li> <li>Port Authority Tolls (6)</li> </ol>	200,000,000
6. HEW Welfare Subsidy (7)	113,000,000
	150,000,000
Total Annual Revenues	\$821,000,000
	,000,000

- (1) Estimates based on data for 1971.
- (2) Federal Highway Trust Fund

Highway Trust Fund monies (collected from Federal taxes on gasoline) must be partially diverted away from the building of more superhighways (intercity) and look to rejuvenation of transit systems (intracity). The gasoline vehicle is use should be used to alleviate its problems.

The Highway Trust Fund may only be used for highways under its present setup. Congressional action is needed to change this. About \$178,000,000 is suggested based upon a value of \$100 per vehicle.

# (3) CBD Parking Fees

Assuming 10,000 special on-street parking spaces in midtown and downtown Manhattan, 7 a.m. to 7 p.m., Monday through Saturday, at \$2,000 per vehicle, 15,000 annual vehicle registrations: \$30,000,000 annually.

## (4) Off-street Parking Tax

Assuming a 100 percent tax (over and above the current 6 percent sales tax) on all off-street parking facilities in the entire City of New York and \$150,000,000 million in gross revenues for 1971 (Reported by the Finance Administration).

Total annual revenues: \$150,000,000.

# (5) East and Harlem River Vehicle Tolls

Total entries into Manhattan per average weekday via all Harlem and East River Bridges and tunnels is 535,500. This breaks down into approximately 486,000 auto and taxicab, 43,100 truck, and 6,400 bus entries.

Assuming a \$1.00 toll for all autos, taxicabs, buses, and trucks bearing proper identification (operator fee sticker) and further assuming that 10,000 trucks per day pay full entrance fees (50% @ 6,000-10,000 lb GVW, 25% @ 10,000-19,500 lb GVW, and 25% over 19,500 lb GVW) then the total daily tolls from all Harlem and East River facilities would be:

525,500 x 5,000 x 2,500 x 2,500 x	15.00 20.00	= = =	\$525,500 75,000 50,000 75,000
	Tota	1	\$725.500

Annual toll revenue would be approximately 360 times this amount or \$261,180,000. Current Triborough Bridge and Tunnel Authority bridge and tunnel revenues total \$75,076,293 (1971). Operating expenses for the existing Triborough Bridge and Tunnel Authority facilities totals \$24,490,966.

Projecting to a total of 16 Harlem and East River bridges and tunnels, the approximate operating cost for these facilities should not exceed \$60 million annually. Thus the total excess excluding amortization of toll facilities (estimated at less than \$10 million by the Transportation Administration) is approximately \$200,000,000.

## (6) Port Authority Tolls

Assumes elimination of commuter discounts, an increase in passenger vehicle, light duty truck and bus tolls to \$2.00 eastbound, no toll westbound, plus a toll schedule for all eastbound trucks not displaying special user fee identification according to weight as follows:

6,000 to 10,000 pounds GVW: 10,000 to 19,500 pounds GVW: 19,500 pounds GVW and over:	· · o o per	entry
. and over:	30.00 per	

Vehicle Type	Annual Trips*	Revenues
Automobiles, taxis, motorcycles, buses, and other specialty vehicles	69,451,827	\$138,903,654
Trucks 6,000 to 10,000 pounds** 10,000 to 19,500 pounds** 19,500 pounds and over	2,722,349 1,166,720 3,679,917	40,835,235 23,334,400 110,397,510
	Total	\$313,470,799

\*Source: Port Authority of New York/New Jersey Central Research and Statistics Division "Annual Recorded Eastbound Vehicular Traffic at Six Port Authority Crossings in 1971" (2/72).

\*\*Assumes a 70/30 split in the medium duty weight range (6,000 to 10,000 pounds and 10,000 to 19,500 pounds, respectively) as reflected by New York State Vehicle registrations and that 10 percent of all trucks traversing Port Authority facilities are registered to operate in Manhattan (i.e., have paid their annual operator fee) as presented by Port Authority annual traffic crossing data for trucks.

Data is not available from the Port Authority on annual gross revenues from bridges and tunnels. A crude estimate can be made by assuming that all Eastbound cars pay \$1.00 (neglecting discounts) and that all trucks and buses pay \$2.00 Eastbound.

Autos: 66,824,284 x \$1.00 = \$66,824,284 Trucks & buses: 10,196,529 x \$2.00 = 20,393,058

TOTAL \$87,217,342

Thus, if the Port Authority grossed approximately \$87 million for its six river crossings in 1971, then the proposed revised toll structure would net an additional \$226,500,000 (rounded off). Assuming that legal measures could be instituted to allow equal distribution to New York and New Jersey, then this funding measure would yield approximately \$113 million annually for support of urban public transit.

#### (7) Health, Education and Welfare Welfare Subsidy

The Tri-State Regional Planning Commission's Regional Profile report "Subway Riders and Manhattan Autos," Vol. 1, No. 14, October, 1971, states that the rich use their cars in New York City, the micile class use public transit, and the poor stay home. For all but essential trips, the poor cannot even afford the cost of a subway ride. By subsidizing urban public transit, by making it "free" to the user, the poor can obtain mobility and thereby the freedom (and motivation) to seek jobs and become more productive participants in our urban environment. Should Health, Education, and Welfare contribute a mere \$100 for each welfare recipient to our public transit operating budget, it would contribute close to \$150 million annually. When combined with the other subsidies outlined above, it could provide New York City with a no-fare system. The City and the State of New York should approach the Federal Government for such support immediately.

AFFIDAVIT OF ROSS SANDLER DATED JULY 30, 1975

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

A 159

FR'ENDS OF THE EARTH, et al.,

Plaintiffs

74 CIV. 4500 (KTD)

-against-

AFFIDAVIT

MALCOLM WILSON, et al.,

Defendants.

STATE OF NEW YORK ) : ss.:

COUNTY OF NEW YORK )

ROSS SANDLER, being duly sworn, deposes and says:

I am a Staff Attorney employed by the Natural Resources
Defense Council and serve as co-counsel for the plaintiffs
herein. I make this affidavit in support of plaintiff's motion
for a preliminary injunction.

Consistently throughout this litigation the defendants have given soothing reassurances that progress is being made, that agencies are gearing up, and that the Transportation Control Plan will become a reality. Yet, in the seven months since this Court's decision the defendants have failed to reach agreement on what must be done on all but noncontroversial strategies, and the city staff has been cut and key administrative personnel reassirnged or removed.

The four key strategies, constituting fully 41% of the city's entire effort, are unresolved with no certainty that there will ever be agreement on applicable federal consensual orders. It should be recalled when reviewing the lack of progress that the decision to renegotiate these controversial strategies

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was made in May, 1974, some sixteen months ago. (Affidavit of Robert A. Low, dated October 18, 1974, filed in this action.) Based upon this office's direct knowledge gained from limited participation in the negotiations, which knowledge was confirmed by Langdon Marsh, Enforcement Counsel of the New York State Department of Environmental Conservation, the status of the negotiations as of July 29, 1975, is as follows:

#### Strategy B-7: Tolls on East and Harlem River Bridges

Both the Governor and Mayor adamently refuse to consent and will not budge. There has been no progress towards agreement.

The Transportation Control Plan, in originally adopting Strategy B-7, found that studies showed diversion of tripmaking from toll bridges to free bridges, resulting in more vehicle miles traveled, and higher air and noise pollution. The problem was worsened because traffic was diverted from high quality limited access arterials to lower quality arterials "providing less vehicle capacity, greater congestion, lower speed, and thereby greater pollution generation." (Transportation Control Plan, page A-37.)

## Strategy B-3: Reduction of Parking Space in Manhattan CBD

Negotiation is at loggerheads. The City opposes the basic demands by the Federal EPA and the State. No movement towards agreement.

The Federal EPA, in its Implementation Status Report as of January 1, 1975 stated that:

"The reduction of parking capacity in the Manhattan Central Business Districts is a principal mechanism for limiting the use of private automobiles in Manhattan. Coupled with measures to provide suitable public transport alternatives, this strategy is essential to the attainment of acceptable air quality."

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# Strategy B-lc: Selective Ban on Taxi Cruising.

There is no agreement. Substantial unresolved differences of opinion on basic issues exist between the State and the Federal and City EPA's.

The Federal EPA, in its Status Report cited above, found that "Significant reductions in vehicle-miles-traveled and, consequently, in emissions of hydrocarbons and carbon monoxide can be achieved through the prohibition of excessive cruising by taxi cabs within certain areas of the City during certain periods of the day." The unenforced Transportation Control Plan requirement, to which the City will not now agree, was itself a compromise. As reported in the Plan, "This [Selective Ban on Taxi Cruising] is a compromise to an earlier request for a total ban on taxi cruising and therefore represents the minimum control we deem essential to meet National Primary Air Quality Standards."

(Transportation Control Plan, page A-25) (emphasis in original.)

# Strategy D-3: After hours delivery to stores and office buildings.

The City, State and Federal EPA claim to have agreed in principle but not on the techniques of implementation, hence their agreement appears to call only for further studies and a limited demonstration project, not major action.

#### Remaining Strategies:

The Federal EPA has secured consent to the issuance of eight orders. These orders, however, relate to noncontroversial strategies, and the ability to achieve consent was not a real issue. While we do not have access to City and State submissions to the Federal EPA in response to the administrative deadlines set

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forth in the eight orders, it does appear that some of the deadlines have been violated. The Federal EPA should be required to report specifically on whether there has in fact been compliance, both timely and of satisfactory nature, with each and every deadline.

During these past sixteen months, as defendants and the Federal EPA proved themselves incapable of resolving their differences, the existing lawfully adopted Transportation Control Plan of April, 1973, which forms the basis for this lawsuit, languished as an unimplemented dead letter. The Court of Appeals for the Second Circuit, in considering the very Transportation Control Plan at issue here, stated with respect to compromise then contemplated that while compromises are acceptable "if national primary air quality standards are achieved, the Clean Air Act does not contemplate allowing extension of achieving the standards merely because reasonably available means are unacceptable to any special group." Friends of the Earth v. EPA, 499 F.2d 1118 (2d. Cir. 1974), 6 ERC 1781, 1787. The fact of the matter is that the City and State agencies are plainly and unequivocally in violation of Federal law. They have sat too long in their vain seeking of painless compromises to cure New York's unhealthy air. On this record, the Court should hasten to invoke its equitable power to preserve the status quo and to require affirmative action.

ROSS SANDLER

12)

Sworn to before me this 30th may of July, 1975.

DAVID S. SCHOENBROD

Notary Public, State of New York
No. 31-3511071
Quantied in York York
Commission Express March 11, 1275

and the state of t

## AFFIDAVIT IN OPPOSITION OF JOHN G. de ROOS

#### DATED JULY 29, 1975

A 163

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,

74 Civ. 4500 (KTD)

Plaintiffs,

-against-

MALCOLM WILSON, et al.,

AFFIDAVIT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Defendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

JOHN G. de ROOS, being duly sworn, deposes and says

- 1. I am the Senior Executive Officer of the New York City
  Transit Authority, and served as its General Counsel until
  April 27, 1975, when I was appointed to my present position. I am
  familiar with the facts herein and I make this affidavit in opposition to plaintiffs' motion for a preliminary injunction.
- 2. Plaintiffs seek to add the New York City Transit
  Authority (hereinafter the "Transit Authority") and David L. Yunich
  as its Chairman as parties defendant. Assuming the Court grants
  such application, they seek to restrain the Transit Authority from
  increasing the present rate of transit fare from 35¢ to an unletermined amount until the Transportation Control Plan has been

"fully implemented," presumably by the Transit Authority and by all other defendants. To the extent that the strategy established by that plan has been adopted and made subject to an order of the United States Environmental Protection Agency, i.e., the increased use of express buses, we are fully complying with such order.

- 3. The Transit Authority is a public benefit corporation established by Article 5, Title 9 of the New York State Public Authorities Law to operate all of the rapid transit (i.e., subway and elevated rail) lines owned by the City of New York and the greater part of the City-owned omnibus lines. The Transit Authority has no taxing powers. To meet its operating expenses of approximately one billion dollars annually it must rely upon farebox revenues and whatever loans and subsidies the city, state and federal governments may grant.
- 4. The Transit Authority is in the midst of a grave financial crisis. For years past the fare has been wholly insufficient to cover operating expenses. The cost of providing a subway ride is now more than double the 35¢ fare. Until now the Transit Authority has been able to meet its expenses through grants and loans from other governmental bodies, principally the City of New York. As is well known, the City is now faced with its own financial crisis. It has advised us that it will be unable to continue loans and grants to the Transit Authority on the same basis as in the past.

- 5. Under a collective bargaining agreement with Local 100 of the Transport Workers Union, AFL-CIO, a cost of living increase of 4¢ an hour to about 35,000 Transit Authority employees fell due July 1. The Transit Authority has not yet paid this increase. The TWU has publicly threatened to strike unless it is paid. (Daily News, July 29, 1975, p. 16, col. 5.) Such a strike would be disastrous for the City as a whole and would be particularly damaging to the interest the plaintiffs purport to be defending, that of air quality.
- that in the absence of additional revenues the Transit Authority will shortly be unable to meet its payrolls. There is no doubt in my mind that this would precipitate a strike and the total shutdown of the City's mass transit system. A fare increase of five cents is estimated to produce increased weekly revenues to the Transit Authority of something between \$800,000 and \$900,000 weekly. With each week of delay in raising the fare, this amount is lost forever and the amount of the increase necessary to meet the Transit Authority's bills becomes greater.
- 7. Plaintiffs allege that the Plan, if fully implemented, would produce other sources of income, such as that realized from the imposition of tolls on bridges heretofore free, parking taxes and vehicle use fees. Assuming that to be correct, it does not

follow, either from the terms of the Plan nor from publicized statements of public officials, that such revenue would be made available to the Transit Authority for its operating expenses. In any event, it is highly improbable that revenues from these sources would be available in sufficient time to solve the Transit Authority's financial crisis.

- 8. It is evident that the defendants in this action are continuing to make every effort to comply with the Transportation Control Plan for the New York City Metropolitan Area Air Quality Control Region. Attached as Exhibit I is a press release issued by the Governor's Office on April 19, 1975 setting forth the text of a letter from Governor Hugh L. Carey in which the State of New York consented to the issuance of administrative orders of the United States Environmental Protection Agency covering eight strategies in the plan. Also attac ed as Exhibit II is a copy of the order covering strategy No. B-5 the only strategy directly applicable to this Authority. There is nothing in the plan which bars a fare increase at this time.
- 9. Plaintiffs' allegations of irreparable harm are without substance. If it should eventually be determined that plaintiffs were entitled to the relief sought (which I think highly unlikely), the fare could be rolled back. The effect on air quality for the period involved could scarcely be considered to constitute "irreparable harm," particularly when weighed against the potentially disastrous consequences of a delay in the fare increase. I have

Authority on its payroll obligations and the strike that would undoubtedly result. Moreover, a fare increase has been publicized as part of a program to restore investor confidence in the City's financial soundness. If the increase were to be delayed, particularly as the result of a court order, the ability of the City and the Transit Authority to meet their obligations would be severely impaired.

- 10. The affidavit of BRIAN T. KETCHAM, sworn to July 28, 1975, submitted in support of plaintiffs' motion contains his opinion that an increase in transit fares to 50¢ would reduce transit ridership by at least 10%, with a resulting increase in automobile travel. The formulas used by Mr. Ketcham to arrive at this conclusion are outmoded. They reflect a time when gasoline was inexpensive, tolls were lesser in amount and the number of unemployed in the City was considerably smaller. It does not follow that any increase in fare would, under present economic conditions, lessen ridership to any material degree.
- 11. Nothing alleged by plaintiffs herein shows that the Transit Authority is in violation of an emission standard or limitation under Chapter 15B of Title 42 of the United States Code or an order issued by the Environmental Protection Administrator or by the State of New York. Moreover, no notice of violation required by 42 U.S.C. § 1857h-2(b) has been given to the New York City Transit Authority.

WHEREFORE, deponent respectfully requests that this Court
(1) deny plaintiffs' motion to add the New York City Transit
Authority and its Chairman as defendants in this action and (2)
deny plaintiffs' motion for a temporary injunction.

JOHN G. de ROOS

Sworn to before me this 29th day of July, 1975

James & mc maken

JAMES P. MeMAHON
Notary Public. State of lithe York
No. 24-/52760
Qualified in Kings County
Enmission Expires March 30, 1976

STATE OF NEW YORK EXECUTIVE CHAMBER HUGH L. CAREY, GOVERNOR

A 169

Robert Laird, Press Secretary 518-474-8418 212-977-2716

FOR RELLASE: P.H., SATE DAY APRIL 19, 1975

Governor Hugh L. Carey signed today a letter of consent for the Transportation Control Plan for the New York City Metropolitan Area Air Quality Control Region.

The letter was addressed to Gerald M. Hansler, Regional Administrator for the U. S. Environmental Protection Agency.

The Governor said that he was signing the letter to bring the State "into compliance both as a matter of law and as a matter of public health."

Following is the text of the Governor's letter:

Dear Mr. Hansler:

When I took office January 1, 1975, the State and City of New York were in default on many of the strategies contained in the Transportation Control Plan for the New York City Metropolitan Area Air Quality Control Region.

This Transportation Control Plan was required under the Federal Clean Ai Act to reduce the levels of air contaminants from motor vehicles to levels that would no longer endanger public health. These existing defaults caused you to issue a formal enforcement letter under Section 113 of the Clean Air Act.

It was my position and that of Commissioner of Environmental Conservation Reid that the State and City must come into compliance promptly both as a matter of law and as a matter of public health.

Accordingly, Commissioner Reid and his staff have met with you frequently to set new timetables in order to achieve compliance as soon as possible. As a result of these discussions, I am pleased to note, that the following United States Environmental Protection Acgency orders covering eight strategies have been agreed upon:

Index No.	Strategy No.	Title
50216B	A-2	Heavy Duty Vehicle Retrofit
50216H	A-3	Tri-Annual Inspection of Medallion Cabs
50216C	A-4	Heavy-Duty Vehicle Inspection
50216D	A5	Passenger Vehicle Emissions Inspection
50216A	A-6	Mechanic Training
502178	B-la	Traffic Enforcement
50216G	B- 1b	Traffic Management
50216E	B- 5	Increased Express Bus Service and Preferential. Lanes

I am gratified that as a result of this cooperation and constructive effort, the State of New York is now able to consent to the

issuance of the administrative orders of United States Environmental Protection Agency bearing the index numbers indicated pove.

Sincerely.

. Hugh L. Carey

Mr. Gerald Hansler Regional Administrator United States Environmental Protection Agency - Region II 26 Federal Plaza New York, New York 10007

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# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II

In the Matter of

STATE OF NEW YORK (Transportation Control Plan -Strategy B-5) **ORDER** 

Index No. 50216E

#### FINDINGS

The Regional Administrator of the United States Environmental Protection Agency, Region II ("EPA") finds that on June 22, 1973 the Administrator of EPA approved the Transportation Control portion of the New York City Metropolitan Area Air Quality Implementation Plan ("the Transportation Control Plan"); that inquiries under Section 114 of the Clean Air Act, as amended, 42 U.S.C. §1857c-9 ("the Act") were sent to the State of New York ("the State") on May 13, 1974; that as a result of said inquiries the State requested permission to submit revisions to the Transportation Control Plan; that on June 26, 1974 EPA granted permission to the State to submit revisions to the Transportation Control Plan and subsequently set December 20, 1974 as the final date for said submission; and that said submission was not forthcoming on said date.

The new Governor, who took office on January 1, 1975, declared his intent to comply with the mandate of the Act. The State was formally notified on January 10, 1975, through the new Governor, of EPA's finding of violation with regard to

trategy B-5, Increased Express Bus Service and Preferential Lanes, in the manner rescribed by Section 113(a)(1) of the Act. A conference was held on February 3, 975 in satisfaction of Section 113(a)(4) of the Act to discuss the said violation.

Although EPA finds, and the State acknowledges, that said violation began on July 1, 1973 and has continued beyond the thirtieth day after the date of EPA's notification, EPA further finds that the new Governor, through the new Commissioner of the Department of Environmental Conservation, has taken initiatives and has been cooperating to achieve compliance with the Transportation Control Plan.

The State has reviewed this Order, believes it to embody provisions that are reasonable, and therefore consents to the issuance of this Order and to its terms.

Based upon the foregoing and pursuant to the authority of Section 113(a)(1) of the Act it is therefore

#### ORDERED

- (A) That the Governor complete the following actions with regard to Strategy B-5 of the Transportation Control Plan on or before the dates specified:
  - (1) September 14, 1975:
    - (a) Certify to EPA that a full scale study has been initiated, the primary output of which shall be a bus master plan for the nine county region comprising the New York portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region (Westchester, Rockland, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk Counties). The study shall include, but not be limited to:

- (i) Tasks listed in Schedule "A" of the agreement between the U.

  Mass Transportation Administration and the Tri-State Regional
  Planning Commission, TS D321, project number IT-09-0923/24,
  which outlines elements of the study entitled "Better Integration of Transportation Modes," and
- (ii) Specification of the number of reserved bus lanes and park and ride lots necessary to achieve a goal of reducing from current levels 20% of the vehicle niles travelled ("VMT") by Manhattanbound automobile commuters.
- (2) March 14, 1976: Submit to EPA either:
  - (a) Certification from the Metropolitan Transportation Authority that agreements have been reached regarding all jurisdictional problems so that:
    - (aa) New York City Transit Authority and Manhattan and Bronx Surface

      Transit Operating Authority buses may operate outside the

      limits of the five boroughs of New York City, and
    - (bb) Connecticut, New Jersey, Nassau or Suffolk County buses may operate within the five boroughs of New York City, or,
  - (b) A copy of the proposals necessary to secure legal authority to resolve any jurisdictional problems incurred in requiring or allowing the operation of buses within or without the areas mentioned in subparagraph (2)(a) above and certification that these proposals have been submitted to the appropriate authorities.
  - (c) March 14, 1976: Submit to EPA plans for a demonstration express bus lane to operate in conjunction with park and ride lots, and which utilizes a reserved lane in the direction of primary travel for both

the morning and evening commutation periods. Such lane shall be established on a parkway or other limited access highway which is presently reserved for passenger vehicles. The plan shall include the detailed description of a program of public information and education.

- (3) July 14, 1976: Submit to EPA a copy of the legal authority, if necessary, that resolves the jurisdictional problems addressed in the March 14, 1976 milestone referred to in subparagraph (2)(b) above.
- (4) September 14, 1976: Implement the demonstration express bus lane identified in the plan submitted on March 14, 1976 and referred to in subparagraph (2)(c) above and certify this implementation to EPA.
- (5) January 14, 1977: Submit to EPA an evaluation and analysis of the demonstration express bus lane. Such document shall, as a minimum, include ridership information, trip purposes of riders, previous mode of travel of riders, cost and revenue information, and comparative travel time with private and other public modes.

## (6) \* March 14, 1977:

- (a) Submit to EPA a final bus master plan covering operation in the New York portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region. As a minimum such plan shall include:
  - (i) A final estimate of the number of buses and all necessary support facilities needed for implementation;

- (ii) An identification of roadways to be used for express bus operations sufficient to achieve a goal of reducing from current levels 20% of the VMT by Manhattan-bound automobile commuters;
- (iii) An identification of the number and location of park and ride lots sufficient to achieve a goal of reducing from current levels 20% of the VMT by Manhattan-bound automobile commuters;
- (iv) Projected bus scheduling information; and
- (v) An implementation schedule requiring:
  - (aa) 25% of the identified express bus route mileage to be fully established by October 14, 1977;
  - (bb) 50% of the identified express bus route mileage to be fully established by May 14, 1978;
  - (cc) 100% of the identified express bus route mileage to be fully established by October 14, 1978.
- (b) To the extent that presently operating rolling stock and necessary support facilities do not meet anticipated express bus requirements. necessary to implement the bus master plan referred to in subparagraph (6)(a) above, order or commence procedures necessary to provide by purchase or other means the required new buses and support facilities.
- (c) Submit to EPA a copy of the application to the Federal Urban Mass
  Transportation Administration ("UMTA") for additional funds above
  those needed to carry out the City-State and Tri-State Regional

Planning Commission agreed upon 6-year transit capital and operating program in order to carry out the final bus master plan referred to in subparagraph (6)(a) above.

- (7) October 14, 1977: Complete establishment of 25% of the express bus route mileage identified in the bus master plan referred to in paragraph (6) above and so certify to EPA.
- (8) May 14, 1978: Complete establishment of 50% of the express bus route mileage identified in the bus master plan referred to in paragraph (6) above and so certify to EPA.
- (9) October 14 , 1978: Complete establishment of 100% of the express bus route mileage identified in the bus master plan referred to in paragraph (6) above and so certify to EPA.
- (B) Where the dates set forth in paragraph (A) above require the submittal of substantive reports, plans or other information to EPA, the Governor, if he so chooses may report the information required by this and the other orders issued regarding the Transportation Control Plan on the "reporting date" next following the incremental dates set forth above. The reporting dates are established as the fifteenth of February, April, June, August, October and December. The reporting dates established by this paragraph shall not be construed as altering in any way the dates set forth in paragraph (A) above for the completion of the actions therein established.
- (C) The Governor shall immediately communicate in writing to the Regional Administrator information relating to any conditions or circumstances which will or may

nder the State unable to comply in a timely manner with the scheduled actions it out in paragraph (A) above. The communication called for by this paragraph hall, wherever appropriate, be accompanied by:

- (1) Copies of any correspondence between the State and any of its departments and any contractors or suppliers having responsibilities in connection with the scheduled actions mandated by this Order.
- (2) Any other or additional documentation from which it may be inferred that any or all of the scheduled actions set out in paragraph (A) above will not or may not be accomplished by the dates specified.
- (3) A discussion of any circumstances or conditions which will or may render compliance with future scheduled actions unachievable, together with steps the State has taken or will take to mitigate such circumstances or conditions. Where the condition or circumstance involves the failure to achieve a milestone beyond the Governor's control, such as the failure of the Legislature to provide required authorities or appropriations, the Governor shall meet with the Regional Administrator to determine alternative courses of action for achieving the emission reductions called for by this Strategy.
- (D) The Governor may delegate any of the reporting or other requirements described hereinabove to such person or persons as he may deem appropriate provided, however, that such delegation is certified in writing to EPA.

It is the understanding and agreement of the State and EPA that the terms of this Order will not have the effect of extending or altering in any way the date r dates fixed for compliance with any provisions of Title 40 of the Code of aderal Regulations other than those to which express reference is made in the erms of paragraph (A) above.

ated: New York, New York

April , 1975

GERELO M. MAISLER, P.E.
Regional Administrator
U.S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007

# AFFIDAVIT IN OPPOSITION OF ALEXANDER GIGANTE JR. DATED JULY 30, 1975

A 179

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FRILADS OF THE EARTH, et al.,

74 Civ. 4500 (KTD)

Plaintiffs,

-----X

-against-

MALCOLM WILSON, et al.,

AFFIDAVIT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Defendants.

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ALEXAMDER GIGANTE JR., being duly sworn, deposes and says:

1. I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, attorney for defendants Beame, Cobb, Eisenpreis, Kove, Guggenheimer, Low, Lazar, Zuccotti, Tarshis, O'Dwyer, Karagheuzoff and The City of New York ("City defendants"). I am fully familiar with the facts and circumstances underlying this case.

- 2. By this motion plaintiffs renew their earlier request for a preliminary injunction enforcing the Clean Air Act-Transportation Control Plan (hereinafter "TCP"). In addition, plaintiffs now seek to enjoin any increase in the fare charged for use of the City's mass transit facilities.
- 3. With regard to the request for preliminary injunctive relief enforcing the TCP, plaintiffs make no showing of any change in circumstances warranting the granting of such relief since this Court initially denied such a request in December, 1974. The Schoenbrod Affidavit, ostensibly in support of that request, is merely a mass of misinformation.
- 4. Indeed, the events which have occurred since December, 1974 argue strongly against judicial involvement with the complex technical issues inherent in enforcement of the TCP. Shortly at er this Court rendered its decision the United States Environmental Protection Agency ("USEPA") initiated administrative enforcement proceedings against the defendants herein. Investigatory hearings were conducted and many meetings between USEPA and the defendants have been held, all directed toward fashioning appropriate enforcement orders.

- 5. As USEPA indicates in the letter attached hereto as Exhibit A, those enforcement efforts have proceeded smoothly and are near completion. Enforcement orders have been issued or prepared for almost all the TCP strategies. And the defendants have been in compliance with those orders.
- 6. Accordingly, there is absolutely no good reason why plaintiffs should be permitted to interfere with the administrative process at this juncture. The considerations of judicial restraint and discretion which compelled this Court to deny plaintiffs' earlier motion for injunctive relief apply with even greater force now that USEPA has virtually completed enforcement action against the defendants.
- 7. With regard to plaintiffs' motion for injunctive relief barring a transit fare increase, it should be noted at the outset that the TCP nowhere prescribes a particular level of fare. And it is only the TCP that plaintiffs may enforce under the Clean Air Act. See 42 U.S.C. \$1857h-2(a). If circumstances external to the TCP are altered in a manner which may

render the TCP inadequate to achieve the air quality standards, then the appropriate procedure is to seek modification of the TCP. See 42 U.S.C. \$1857c-5(a)(2)(h)(ii).

- 8. Hence, the allegations and "proofs" contained in the Ketchum affidavit are irrelevant. Whatever the nexus between a fare increase and increased automobile usage, the Clean Air Act and the TCP do not provide a basis for judicial intervention.
- 9. Furthermore, even if there were some basis for this Court to act regarding the fare increase, the extraordinary relief demanded by plaintiffs should not be granted on the papers submitted to the Court. I believe that defendants are entitled to a full examination of the factual assumptions upon which plaintiffs rely before the Court considers the request for a preliminary injunction.

  Of the factual Assumption of the request for a preliminary injunction.

Sworn to before me

this 30th day of July, 1975.

Thehen L. ( Interer

MELVIN L ORTNER Notary Public, State of New York (B) 214017541

Certain ate Field in King's County Term - pines March 30, 1976



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II 26 FEDERAL PLAZA NEW YORK, NEW YORK 10007

July 30, 1975

Adrian P. Burke, Esq.
Corporation Counsel for
the City of New York
Municipal Building
New York, New York 10007

Attn: Alexander Gigante, Jr., Esq.

Re: Friends of the Earth, et al. v. Malcolm Wilson, et al.

Dear Mr. Gigante:

We understand that a motion is being heard today in the abovereferenced case which concerns enforcement of the Transportation Control Plan (TCP) for the New York City area.

Notices of Violation were issued to the City and State in January, 1975 regarding twelve strategies of the TCP. On February 3, 1975 a conference in satisfaction of Section 113(a)(4) of the Act was held.

On April 18, 1975 EPA issued administrative orders pursuant to Section 113(a)(1) of the Act, which were consented to by the City and the State, which covered eight strategies of the TCP, A-2, A-3, A-4, A-5, A-6, B-1A, B-1B and B-5.

In June and July meetings were held with representatives of the City and State. It is expected that within one week, copies of orders covering two additional strategies, B-lC, Selective Ban on Taxi Cruising and D-3, After-Hours Goods Delivery for which the Notices of Violation were issued will be sent to the State and City requesting their consent. These orders are based upon information received and considered during and since the issuance of Notices of Violation from State and City officials as well as citizens and interested groups.

There remain two additional strategies for which the Notices of Violation were issued, B-7, Tolls on the East and Harlem River Bridges and B-3, Reduction of Parking Spaces in the Manhattan CBD's. These strategies will be the subject of later EPA enforcement orders.

Sincerely yours,

Eric B. Outwater

Acting Regional Administrator

cc: David Schoenbrod, Esq.
Natural Resources Defense Council, Inc.

David G. Hawkins, Esq. Natural Resources Defense Council, Inc.

James P. Corcoran, Esq. Assistant Attorney General Office of the Attorney General

UNITED ST	WIES	DISTRI	CT C	OURT
SOUTHERN	DISTI	TOT OF	NEW	YORK

FRIENDS OF THE EARTH, et al.,

Plaintiffs,

-against-

MALCOLM WILSON, et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO MOTION FOR PRELIMINARY IN-JUNCTION

#### W. BERMAND RICHLAND

Corporation Counsel,

Attorney for City Defendants

Municipal Building, New York, N. Y. 10007

Due and timely service of a copy of the within

is hereby admitted.

New York, 19

Attorney for

To

Attorney for

, Esq

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### DATED JULY 30, 1975 1 mcas A 185 2 UNITED STATES DISTRICT COURT 3 SOUTHERN DISTRICT OF NEW YORK 4 5 FRIENDS OF THE EARTH, et al., : 6 Plaintiffs, 7 - against -: 74 Civ. 4500 8 MALCOLM WILSON, et al., 9 Defendants. 10 11 Before: 12 HONORABLE KEVIN THOMAS DUFFY, 13 District Judge. 14 15 New York, New York July 30, 1975 - 2:20 p.m. 16 17 Appearances: 18 DAVID SCHOENBROD, Esq., and ROGS SANDLER, Esq. 19 Attorneys for Plaintiffs. 20 STUART RIEDEL, Esq. Attorney for Defendant New York City 21 Transit Authority BY: JAMES P. McMAHON, Esq., of Counsel. LOUIS J. LEFKOWITZ, Esq. 23 Attorney General of the State of New York JAMES P. CORCORAN, Esq. BY: Assistant Attorney General, of Counsel. 25 ALEXANDER GIGANTE, JR., Esq. Assistant Corporation Counsel of the City of New York.

TRANSCRIPT OF PROCEEDINGS

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2	THE COURT: I assume that for open both
3	parties will move to amend the complaint to drop Malcolm
4	Wilson and to add Hugh Carey.
5	MR. SANDLER: Yes, your Honor.
6	THE COURT: Is that correct?
7	MR. SANDLER: Yes.
8	THE COURT: Where is the attorney for the State
9	of New York?
10	MR. CORCORAN: I have no objection to that.
11	I request that the papers be so amended.
12	THE COURT: I assumed that Malcolm Wilson was
13	sued in his capacity as governor.
14	MR. CORCORAN: That is righ
15	THE COURT: All right.
16	Do any of the parties have any other papers
17	to submit?
18	MR. SANDLER: Yes, your Honor.
19	(Pause)
20	THE CORT: Have all counsel seen the various
21	affidavits just handed up to me?
22	MR. SCHOENBROD: We have just received them.
23	THE COURT: Did you read them?
24	MR SCHOFNBROD: Very briefly

THE COURT: Is there anything in them that you

disputed?

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MR. SCHOENBROD: Yes, your Honor, in several respects. First of all, it is said that the basic assertion in Mr. Ketchum's affidavit is that there would be a 10 percent loss in subway fare ridership. They say this assertion is made on outdated figures. Mr. Ketchum's analysis is based on a 1975 report issued by the state department of transportation. If there is any question as to the validity of the facts asserted, we have in the room with us Mr. Robert Riccles, who is a former commissioner of the air resources department of the city of New York, and Mr. Ketchum, and they will both be available to answer any questions in this regard.

THE COURT: All right.

MR. SCHOENBROD: We have other objections as well.

THE COURT: What are the other ones?

MR. SANDLER: If your Honor please, my name is Ross Sandler. We have just received these papers. Some of them are technical. We have discovered, for instance, in the Transit Authority's memorandum that they talk about need for funds. They talk as if the fare increase proposed relates somehow to the Transit Authority's wage increase, but as we calculate it out the wage

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increase is for one cent and they are asking for a fare increase of ten to fifteen cents.

We would like to document to your Honor the fact that there is no relationship between the proposed fare increase and the actual needs of the Transit Authority.

THE COURT: All right. What position does the state of New York take?

MR. CORCORAN: With regard to the transit fare here, your Honor --

THE COURT: That is all I'm worried about.

I have enough to do.

MR. CORCORAN: The state officials have informed me that they cannot take a position on the issue at this time and they do wish additional time to prepare a response to that at this point.

THE COURT: How about the city?

MR. GIGANTE: Your Honor, it is my position, first of all, there is no basis for the plaintiffs to ask this court to enjoin the Transit Authority's fare increase under the Clean Air Act. There is nothing in the transportation plan related to fixing the level of the fare. In fact, it is very significant that although the plan recognizes the relationship between ridership

and fare changes, it specifically avoided setting a level of fare in the plan.

What the plaintiffs are saying here really, your Honor, is that something may occur outside the plan which may throw in the question of the accuracy of the plan as it affects national quality air standards.

The Clean Air Act provides that the administrator, the USEPA, may revise the plan when on information submitted to him it is shown that the plan may be inaccurate to achieve national standards. That is the proper course of action.

If the proposition set forth today is accepted by the accord, then every action by local government, no matter what, is subject to scrutiny by a federal district court and the effect of the plan is lost.

You can be asked, your Honor, to review next week the driving habits of those city of New York employees who have been laid off -- it is that ludicrous -- and the question may be the increase in driving activity, they are not taking subways to work.

Nothing in the plan requires a particular level of fare. The Clean Air Act prohibits plaintiffs to sue to enforce the plan. That's first.

Second, if your Honor believes nevertheless

a fare increase, then I believe we must have a hearing on some factual allegations and we need some time to get some experts or this and prepare a response. We have had less than two days' notice.

THE COURT: All right. Who is here for the United States, the Environmental Protection Agency?

The record will note that no appearance is made.

Has anyone in this case at any point up till now followed a suggestion made by this Court that the USEPA be joined?

MR. SCHOENBROD: No, your Honor, we have not, and the reason is that we had to bring this case on very quickly. The primary suit is not with EPA but with the city.

THE COURT: The record will note that the opinion was filed December 16, 1974. The last paragraph suggests:

"Such denial is, however, with leave to renew the application at such time as the position of the USEPA is clarified," etc., etc., "at which time it will be appropriate for plaintiffs to add the USEPA as defendant to oversee the requested

enforcement.

"So ordered."

Yes, Mr. Gigante.

MR. GIGANTE: Subsequent to your opinion in

December, the USEPA instituted enforcement proceedings

under the Clean Air Act against all the defendants

herein. As the affidavits make plain, many consent orders

were issued. Two more are imminent. Two remain. There

is a letter appended to my affidavit to the EPA which

outlines what has occurred so far.

THE COURT: I believe you, except for one thing.

This particular case is one seeking a preliminary

injunction. Under the direction of the Second Circuit

I must have an evidentiary hearing. Who is here from the

USEPA?

MR. GIGANTE: No one is here because the plaintiffs in the six or eight months --

THE COURT: Couldn't you invite them?

MR. GIGANTE: Couldn't I invite them? I'm sure we could, your Honor.

THE COURT: Who is going to tell me what is going on?

MR. GIGANTE: If I may finish, your Honor -THE COURT: Sure.

MR. GIGANTE: -- during the six months these proceedings were being conducted by USEPA the plaintiffs didn't follow through. Now suddenly on two days' notice the fare increase has prompted them and they come in and ask to renew the motion for a preliminary injunction.

If the USEPA comes in here they can relate the entire history of the proceedings, what is going on, what is expected to happen, and so on.

THE COURT: Where are they located?

MR. GIGANTE: 26 Federal Plaza, your Honor.

THE COURT: Believe it or not, it is
approximately 200 yards away from this courtroom. Yes?
MR. SCHOENBROD: Yes.

Did anyone give notice to the USEPA?

THE COURT: Maybe it is 195 yards.

MR. SANDLER: Yes, your Honor, we gave actual notice on the day that the order was signed and in the papers presented by the city they have included a letter from the EPA, obviously indicating their having been in close contact with them.

THE COURT: Is there anyone here from the Metropolitan Transit Authority?

MR. McMAHON: I'm here from the New York City
Transit Authority.

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THE COURT: That is close enough. I am sorry if I used the wrong term. What is your name, sir? I haven't got it.

MR. McMAHON: James P. McMahon representing the New York City Transit Authority.

THE COURT: Tell me what your position is.

MR. McMAHON: My position is that there are two items before your Honor. One is to add the New York City Transit Authority to this action.

Under the Clean Air Act to maintain a citizens' suit you must get a sixty day notice of violation. No such sixty day notice of violation has ever been given to us. There is nothing in the complaint about raising the fares. There is an attempt to circumvent the statutory provisions by adding us to an old case and trying to say that that notice given back in 1974 is applicable to us today, and it is not.

They have no standing and there is no jurisdiction to maintain this case against the New York City Transit Authority.

THE COURT: Of course you also take the position that the New York City Transit Authority is a completely different entity than the city or any of the defendants named in this particular case?

is all.

MR. McMAHON: Yes, your Honor.

THE COURT: I just want it spelled out.

Go ahead. I'm not stopping you.

MR. McMAHON: The fact that the Metropolitan

Transportation Authority was a party to this proceeding
initially -- there are any number of cases T can give
the Court, any number of citations to the effect that they
are separate and distinct bodies and that service of
notice on one is not service on another. They are
separate corporate entities with separate principal
offices. The only similarity between the Metropolitan
Transportation Authority and the New York City Transit
Authority is that we have the same board members. That

THE COURT: That is a persuasive similarity.

MR. McMAHON: Your Honor, we have separate --

THE COURT: I am not in any way deprecating your argument. I understand exactly what it is.

Let's get this thing shaped up so we can go ahead and, if need be, hold a hearing.

MR. McMAHON: If I may interrupt --

THE COURT: Sure, I have been interrupted by others.

MR. McMAHON: I still feel that it is not

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necessary to hold a hearing since the question before
the Court is to enjoin the New York City Transit
Authority from raising the fare, and I don't believe there
is jurisdiction to do that.

THE COURT: I understand that. However, I have got to shape it up into a form where I can handle it.

Right now this entire case is somewhat formless. You have just moved to dismiss the amended complaint against your client; is that correct?

MR. McMAHON: That is correct.

THE COURT: And you are going to supply me and everybody else with a letter by Friday at three o'clock in which you set forth the authorities as to why I should dismiss this complaint. Nothing formal, just a letter. I wouldn't even care if you wrote it out in hand and Xeroxed it.

MR. McMAHON: Your Honor, I have pretty much done that already in the memorandum that I have already submitted.

THE COURT: I'm sorry. I did not get a chance to look at it, Counsel.

MR. McMAHON: I have submitted a memorandum and I have submitted an affidavit in opposition here and it is our contention that we are not a proper party here.

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THE COURT: Let me just check to make sure I have that. 3 I found the memorandum. 4 MR. McMAHON: There is also an affidavit. 5

So it is your motion, basically, to dismiss as to your client; right?

MR. McMAHON: Yes.

THE COURT: Okay.

THE COURT: How about the state? You have already indicated that you are not in a position to really make a statement one way or the other.

MR.CORCORAN: With regard to the transit fare issue, your Honor?

THE COURT: Yes, I'll take them one at a time. When would you have your answer?

MR. CORCORAN: One week, your Honor.

THE COURT: How about Friday by three o'clock? Nothing formal, you know, I don't want an affidavit signed by some commissioner of transportation who is located in Albany. It is unnecessary. Just tell me what the position is and I'll believe you.

MR. CORCORAN: If I can get a position by that time.

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THE COURT: I'm sure you can.

MR. CORCORAN: All right.

THE COURT: How about the city?

MR. GIGANTE: I also already stated the basic position that the Court --

THE COURT: I heard you the first time around.

MR. GIGANTE: I don't know what you want me to say. With regard to the progress that has ensued since your earlier opinion, the administrative proceedings of USEPA -- I think that relates to the other part of the motion that your Honor does not wish us to speak to right now, the attempt to renew the earlier motion for a preliminary injunction. Limiting ourselves to the transit fare, I reiterate what Mr. McMahon said and I repeat the position that there isn't any basis under the Clean Air Act to bring the city into this case.

THE COURT: How about the plaintiffs?

MR. SANDLER: If your Honor please, just on the matters that you have been talking about, we have submitted a memorandum of law on the court's jurisdiction with respect to the transit fare increase. In short, it is our position that this court has power to sustain the status quo -- we sustained status quo at the time the lawsuit was commenced. The anticipated acts will destroy that status quo and the citations and authorities

include the Clean Air Act which preserves all rights of common law statute on the Clean Air Act. Your Honor has ample authority in the area. With respect to additional time, your Honor, we of course have no objection for counsel to have such time as necessary and as your Honor orders, but we request that any time not be used to raise the transit fare before your Honor has a chance to rule on our motion. We would ask that that be a condition of additional time.

THE COURT: No. Put yourself in the position of these gentlemen sitting behind you. They are not in a position to commit their clients to that kind of a thing. However, the amount of time which I gave them is very short and I recognize the tremendous burden under which they will be and I'm quite sure that those people in a position to raise the transit fare also recognize what a burden they will have.

MR. SANDLER: Your Honor, we of course have no knowledge as to what they intend to do, except what we have gained from the newspapers, and the newspapers do indicate that it is entirely possible and indeed probable that the fare increase is going to take place this week prior to Friday.

THE COURT: I read the papers too.

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All right, go ahead. Do you want in any way, shape or form to make any further written submission to the Court?

MR. SANDLER: Yes, we do, your Honor.

THE COURT: Friday at three o'clock.

MR. SANDLER: Yes. Thank you.

THE COURT: Who is the counsel for the USEPA? Does anybody know?

MR. SANDLER: They are represented in court by the United States attorney's office. I don't believe they have the authority to come into court directly themselves. They are located 50 yards behind this building.

THE COURT: I know where they are, believe it or not.

> Who the regional administrator of the USEPA? MR. SANDLER: His name is Gerald M. Hansler.

THE COURT: I consider it the professional responsibility of each and every one of you to notify Mr. Gerald M. Hansler, regional administrator of t United States Environmental Protection Agency, region 2, 26 Federal Plaza, New York City, that if he has anything to say, he had better say it by Friday at three o'clock. I am not going to be a stickler about having the

U.S. attorney represent him. I'm quite sure that if he submits it to Mr. Curran or his assistants that there will be no difficulty, but if he has got anything to say, he has got to say it then.

All right. Does everybody understand the ground rules?

MR. GIGANTE: I have a question, your Honor.
THE COURT: Sure.

MR.GIGANTE: By Friday at three o'clock all additional submissions relating to the one question of whether the Court has jurisdiction to entertain the motion should be submitted; is that right?

THE COURT: Anything that you want to say.

MR. GIGANTE: With regard to the factual allegations as to the effect of the transit fare increase, if your Honor decides, will there be a hearing?

THE COURT: Absolutely. Take a look at the case of SEC v. Frank.

MR. GIGANTE: I think there is a Xerox of it in the papers.

THE COURT: I must have a complete hearing.

MR. GIGANTE: By Friday you want an additional submission regarding the Court's jurisdiction to entertain the motion.

THE COURT: Yes, and also if you want to make any additional facts known to me, you may state them. But eventually we are going to end up with a hearing, if need be, and we are going to have to have live witnesses telling me what the effect of this thing is going to be and so on and so forth.

MR. GIGANTE: If you are not persuaded by our papers that there is no jurisdiction to entertain the motion. That is the threshold issue.

THE COURT: Sure. Lord knows if I don't have prisdiction, I won't entertain the motion. I have other things to do.

MR. GIGANTE: We are only directing ourselves to the transit fare question.

THE COURT: Absolutely, yes.

Everybody understands the rules. The papers are to be delivered, the originals to the clerk of the court and one copy to chambers, which is room 1601 of this building. All right.

# AFFIDAVIT OF ROBERT N. RICKLES

## DATED AUGUST 1, 1975

A 203

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,

Plaintiffs,

74 CIV. 4500 (KTD)

-against-

HUGH CAREY, et al.,

AFFIDAVIT

Defendants.

STATE OF NEW YORK ) : ss.:

ROBERT N. RICKLES, Ph.D., P.E., being duly sworn, deposes and says:

#### QUALIFICATIONS

I am currently Executive Director of the Institute For Public Transportation ("IPT"), a not-for-profit transportation research group with offices located at 211 East 43 Street, New York, New York. Over the past three years, IPT, under my direction, has investigated and reported on various aspects of the tri-state region's public transportation systems. This effort included the preparation of an alternative transportation plan for the State of New Jersey, and an intensive study of mass transit alternatives to the West Side Highway, which involved sophisticated evaluation of modal splits between mass transit and auto use depending on time and cost to the user. The latter study was performed for the New York State Department of Transportation and the Federal Highway Administration.

In addition to my duties as Director of IPT, I am also Director of the Northeast branch of WAPORA, Inc., an engineering and environmental consulting firm.

Before establishing IPT, I was, from March 1970 to

February 1972, Commissioner of the New York City Department of

Air Resources. During this period, I was instrumental in developing New York City's air pollution code, in establishing the

City's Bureau of Motor Vehicle Pollution Control and in formulating
the New York State Transportation Control Plan for the New York

Metropolitan Area.

My Ph.D. degree is in chemical engineering, and I am a licensed professional engineer in the State of New York.

# A FARE INCREASE TO 50 CENTS WILL INCREASE AIR POLLUTION BY 15 PERCENT

Based upon estimates made by the New York State Department of Transportation, I estimate that a subway fare increase to 50 cents will cause 650,000 daily trips to be diverted from mass transit. Assuming that 20% of these trips will no longer be made, there will be 520,000 which must be made by means other than mass transportation. This amounts to 260,000 round trips.

Based on travel characteristics developed by the Tri State
Regional Planning Commission, approximately 20% of these lost
transit riders must still enter the central business district of
Manhattan.\*

Available statistics indicate there are, on an average,

1.4 riders per car. Accordingly, approximately 37,000 additional
cars and taxis will enter the central business district of

Manhattan. Again, Tri-State data indicates that approximately 252
of those cars and taxis entering the central business district

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<sup>\*</sup> That area in Manhattan below 60th Street.

will enter between the morning rush hour, 7-10 a.m. This would amount to approximately 9,300 cars and taxis.

Available data indicates that on an average business day 121,953 cars and taxis enter the central business district.

Accordingly, a fare increase to 50 cents would increase the number of cars entering the central business district during morning rush hours by 7.6%, thereby increasing already congested streets.

An increase in congestion will increase air pollution in the central business district of Manhattan for two reasons.

First, more cars mean more vehicle miles traveled. This translates into an increase in vehicle emissions. Second, the emissions per vehicle-mile will be much greater. Additional congestion will decrease the average speed of each car. According to emissions factors developed by the USEPA, emissions per car vary inversely with car speed. That is, the slower a car travels, the higher the emissions per mile traveled. This inverse relationship is very sharp at the very low speeds experienced in the Manhattan central business district.

The following chart for carbon monoxide emissions serves as an example: for the current year assuming 60°F average ambient temperature, and 40% cold starts\*:

МРН	CO EMISSIONS (Grams Per Mile)	
. 5	310	
10	169	
15	109	
20	77	
25	69	

In sum, because of both more cars in the central business district of Manhattan and more emissions per car, I estimate that

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<sup>\*</sup> Source: "Supplement No. 5 For Compilations of Air Pollution Emission Factors," April 1975, USEPA.

a fare increase to 50 cents would produce approximately a 15% increase in the levels of the carbon monoxide over the period from 9 a.m. to 5 p.m.

THE ADVERSE EFFECTS OF A FARE INCREASE ON AIR POLLUTION WOULD BE FAR LESS WERE THE TRANSPORTATION CONTROL PLAN ("TCP") IMPLEMENTED.

Were the control strategies of the Transportation Control Plan implemented, air pollution levels would have decreased rather than increased sharply since the adoption of the TCP. Thus, any addition to air pollution caused by an increase in transit fares would begin from a far lower base of air pollution than prevails today.

Moreover, the increase in air pollution caused by a transit fare increase is far greater today than it would have been had the controls been implemented. For instance, had the parking strategy of the Plan been implemented, sharply reducing the number of available parking spaces in the central business district of Manhattan, a fare increase would not produce the same shift in ridership from public transportation to privately owned passenger cars.

This is so because most of the automobile traffic in downtown Manhattan is traveling to and from a downtown Manhattan destination. Accordingly, trips to downtown Manhattan that would otherwise be made by auto will not be made by automobiles if automobile storage facilities - parking - is not available.

Analysis of travel behavior indicates that mode choice the decision to use mass transportation or automobiles - varies
with a wide variety of factors; cost, time and convenience being
the most important. Consequently, reducing parking opportunities
would be an important influence in deterring people from bringing
automobiles into downtown Manhattan.

Moreover and more important, the TCP envisions an

absolute limitation on the amount of parking spaces available in downtown Manhattan. This in turn will cause an absolute limitation in the number of automobile trips made to downtown Manhattan.

Other strategies of the Plan, were they ir force, would also decrease the impact of a transit fare hike. Strategies to ensure better traffic management to gain a better flow of traffic, to decrease taxi cruising, and to shift the delivery of much freight to after rush hours, all would serve to decrease the amount of congestion on the streets of Manhattan. This in turn would mean that the amount of emissions per car-mile would be substantially less were all these strategies to be enforced.

#### A FARE INCREASE WILL DELAY ACRUEVEMENT OF AMBIENT AIR STANDARDS.

The TCP seeks to sharply reduce vehicular traffic in the central business district of Manhattan by diverting travelers to public transportation. In particular, it seeks to decrease the mileage traveled by privately owned passenger cars by 50%. Thus, the Plan seeks to change the traveling habits of a substantial number of people.

The TCP seeks to change these habits through implementation of strategies approved by the City and State in June 1973.

First, imposing a 50 cent fare at this time without any of the Plan's strategies being fully implemented, would jeopardize the ability of the Plan to being about even a modest change in the traveling habits of the general public. Without the full implementation of all TCP strategies, a fare increase will divert the traveling habits of the public towards the privately owned passenger car. Accordingly, once the Plan is implemented, its strategies will have to affect far greater impact to achieve the original goals of the Plan in terms of reducing vehicular traffic in the Manhattan central business district.

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Second, as the Plan itself recognizes, changing such traveling habits in the first place is difficult. Travel patterns involve not just human habit, but human habit embedded in purchases of capitol equipment (automobiles) and choice of job and residential location affected by travel conditions. An increase in fares without parking restrictions and other strategies of the Plan being in force will result in more people purchasing automobiles and choosing work and esidential locations to facilitate automobile travel.

Third, imposing a fare increase without the strategies of the Plan being in force will impede and delay implementation of the strategies themselves. The Plan envisions a decrease in available parking spaces in the central business district of Manhattan and an increase in parking spaces at perpherial points of the central business district where commuters may leave their cars to use public transportation. A shift from public transit to privately owned cars will encourage parking lot owners to build additional parking lots instead of considering other uses. In addition, it will discourage the private sector from building parking facilities at peripheral park and ride locations.

Imposing a fare increase without the strategies of the Plan being implemented will have a more subtle, but equally important impact on the speed at which the strategies of the Plan are implemented. From my experience as Commissioner of Air Resources of the City of New York, I fully realize that implementing a transportation control plan requires cooperation from a tremendous number of individuals and institutions in many parts of the private sector and at all levels of government.

When a governmental program is moving ahead, it is difficult enough to coordinate all these factors to move cooperatively towards implementing that policy. But, where a governmental policy such as the "CP is moving backwards, as would

be the case were a transit fare increase to be allowed while the strategies of the Plan are not implemented, many of these individuals and organizations would likely increase their resistence to taking actions they do not find in their self interest. Such a result would inevitably increase resistence to and foster a general lack of cooperation with air pollution control officials and administrative agencies.

In sum, imposing a tare increase without the strategies of the Plan being fully implemented will delay attainment of clean air goals.

ROBERT N. RICKLES

Sworn to before me this 1st day of August, 1975.

DAVID S. SCHOENBROD Notary Public, State of New York

Qualified in New York County Commission Expires Marca 31, 17,77

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AFFIDAVIT OF GERALD M. STURMAN DATED AUGUST 1, 1975

A 210

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,

Plaintiffs,

v.

74 Civ. 4500 (KTD)

HUGH CAREY, et al.,

Defendants.

AFFIDAVIT

STATE OF NEW YORK )

COUNTY OF NEW YORK )

GERALD M. STURMAN, Ph.D., being duly sworn, deposes and says:

I am a partner and senior vice president in the firm of Parsons Brinckerhoff Quade & Douglas, Inc., which is an international engineering consulting firm with its principal offices at One Penn Plaza, New York, New York. A resume of my professional qualifications is attached as Exhibit "A".

I have charge of the work of approximately 55 professionals in my company involved in urban and regional planning, transportation planning, and a wide variety of environmental services. This work entails analysis of the environmental impact of high-ways, mass transportation facilities, and other transportation facilities. It includes detailed analyses of the factors influencing the public's choice of travel mode, the impact of these choices upon air pollution levels, and measures that can be taken to reduce the air pollution impact from vehicular traffic.

My work has involved preparing environmental analyses of transportation projects in the Metropolitan New York area, including the environmental analysis of the proposed West Side Highway project under a contract from the New York State Department of Transportation and the Federal Highway Administration.

I am generally fa thiar with the contents and state of implementation of the New Ork City Metropolitan Control Plan.

I have read the affidavit of Brian T. Ketcham, ted July 28, 1975, submitted in this case. With respect to the sections of the affidavit upon which I feel qualified to comment (§§3,4,7,8)\*/, Mr. Ketcham's conclusions appear to be reasonable and his method of analysis reflects the present state of the art.

Based upon my own experience and analysis, my own conclusions are that a transit fare increase to \$.50:

will cause a significant loss in transit ridership;

substantially increase automobile travel. and levels of air pollution in Manhattan;

increase the difficulty and delay in achieving national ambient air standards in New York City under the existing Transportation Control Plan or a revised Transportation Control Plan; and

cause a greater impact upon air pollution than if the Transportation Control Plan were fully implemented.

Existing implementation of the Transportation Control Plan has been seriously retarded and implementation of the

<sup>\*/ (§3)</sup> Impact of fare increase on transit ridership; (§4)

Impact of fare increase on air pollution; (§7) The lack
of Plan implementation resulting in a larger effect from a
fare increase; (§8) The availability of strategies in the
Transportation Control Plan that would produce more revenue
than a 15 cent fare increase.

consent orders signed in April, 1975, has been seriously retarded. The increase in fares would have a longer range and larger impact than would otherwise occur if the Transportation Control Plan had been implemented in a timely fashion.

The Transportation Control Plan contains strategies that would reduce air pollution and produce substantially more revenue than a \$.15 fare Increase.

In conclusion, increasing fares instead of implementing the alternative revenue measures in the Transportation Control Plan will have a long range, adverse impact on air quality in New York City.

GERALD M. STURMAN, Ph.D.

Sworn to before me this

1st day of August, 1975

MICHAEL J. MCKNEAEY
Notar, Public, State of Thew York
Hs., 24-22-2360
Qualified in Kings County
Certifical e filed in New York County
Commission Septics March 30, 1877

Notary Public

GERALD M. STURMAN
Senior Vice President, Parsons, Brinckerhoff, Quade &
Douglas, Inc. ("Parsons")

#### Education

Columbia College, A.B., 1956 Columbia University, B.S.C.E., 1957; M.S.C.E., 1959 Cornell University, Ph.D., 1963

#### Societies

American Society of Civil Engineers Association for Computing Machinery New York Academy of Sciences American Concrete Institute, Wason Medal for Research, 1963 Tau Beta Pi, Phi Kappa Phi

#### Licensed

New York, Massachusetts, New Jersey, Connecticut

Dr. Sturman is Principal-In-Charge of all of Parsons' environmental services including air quality monitoring and air quality diffusion and impact analysis. In addition, he has managed a large number of environmental impact studies which include extensive monitoring and analysis. Dr. Sturman, along with his staff, pioneered in the application of diffusion modeling of emissions from mobile sources to the impact of motor vehicle pollution in urban areas, and has written technical papers and contributed to books in this field. He has supervised Parsons' work on environmental impact evaluations for the following projects:

Trident Support Site EIS (Kitsap County, Washington); West Side Highway EIS, New York City Transit Authority Route 131-B-and-C EIS (New York, N. Y.); South Quincy Area Transit Station EIA (Quincy, Mass.); MARTA EIS (Atlanta, Ga.); Kalanianaole Highway EIS, Interstate Route H-3 EIS, Kohakohau Dam EIS, Fort Weaver Road Improvements EIS (Oahu, Hawaii); Interstate Route 495 and Relocated Route 140 EIS (S/E Mass.); Cross County Parkway Widening EIA (Westchester County, New York); Eagle-Piney Denver Water Supply EIS (Denver, Colorado); Albany Airport EIS (Albany, N. Y.); Leigh Street Viaduct EIS (Richmond, Virginia); Wyoming Valley Flood Control EIS (Wyoming Valley, Pa.); James River Bridge EIS (Newport News, Virginia); Third Street Bridge EIS (Wilmington, Delaware).

## AFFIDAVIT OF BRIAN T. KETCHAM, P. E. DATED AUGUST 1, 1975

A 214

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al., )

Plaintiffs, )

74 Civ. 4500 (KTD)

V. )

HUGH CAREY, et al., )

Defendants )

AFFIDAVIT

STATE OF NEW YORK )

SS:

COUNTY OF NEW YORK )

BRIAN T. KETCHAM, P.E., being duly sworn, deposes and says

In his affidavit of July 29, 1975, Mr. John G. de Roos challenges my conclusion that there will be a 10% or more loss in ridership on the theory that I relied on "outmoded" formulas (page 5).

This is false. Among other sources that I relied upon was the report "Public Transportation Operating Assistance: Evaluation and Options" conveyed from New York State Department of Transportation Commissioner Raymond T. Schuler to Governor Hugh L. Carey on February 1, 1975. A copy of the letter of conveyance and the relevant section is attached as Exhibit A.

Application of the information presented on pages 28, 30 and 32 of this report indicates that a fare increase to \$.50 would produce a loss of ridership of 10.7%.

Part of the reason that Mr. de Roos claims that my supposedly outdated sources are inaccurate is that unemployment, in his view, lessens the impact of fare increases in transit ridership. This conclusion was explicitly

rejected by the State DOT on the basis of recent data. As noted in the report:

"Contrary to popular belief, ridership declines in New York City appear not to be closely associated with downtown employment declines or other factors (other than fare increases or service cuts)." (p.30)

Mr. de Roos' assertion about loss in transit ridership is apparently contradicted by other assertions in his affidavit. This is shown in the following analysis.

Mr. de Roos notes that:

"...a fare increase of five cents is estimated to produce weekly revenues to the Transit Authority of something between \$800,000 and \$200,000." (p.3)

This translates into an annual revenue of between \$41.6 and \$46.8 million for each five cent increment in the transit fare.

Thus a fifteen cent fare increase to 50 cents will produce between \$124.8 million and \$140.4 million annually.

MTA's 1974 Annual Report indicates that paid person trips in 1974 for all TA and MaBSTOA bus and subway operations totaled 1,841,322,000. Recent TA estimates indicate that for 1975 ridership declined by only 2% or by 36,826,000 rides. Estimated paid ridership for 1976 should therefore be roughly 1,804,496,000, assuming no transit fare increase and no service cuts. A 35 cent transit fare will therefore generate \$631,573,600 in transit revenues.

Defendants allege that

"It does not follow that any increase in fare would, under present economic

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conditions, lessen ridership to any material degree." (p.5)

Were this so then a 50 cent fare (75 cents for bus-to-bus transfers) will produce approximately \$857,135,600 including an assumed 5% loss in transit fares due to bus transfers. This calculation shows a revenue increase of \$225,562,000. The de Roos affidavit predicts a revenue increase of from \$124.8 million to \$140.4 million.

Apparently the Transit Authority is, in fact, assuming some loss in ridership due to a fare increase in their calculations. This has been determined, through a series of iterative calculations to be between 10% and 11.8%. My prediction was 10% or more, based in part upon the State DOT formula projecting 10.7%.

Brian T. Ketcham, P.E.

Sworn to before me this 1st day of August, 1975.

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Notary Public DAVID'S SCHOENERUD

No. 31-4511671
Qualified in New York County
Commission Expires March 31, 1927

## AFFIDAVIT OF JAMES P. CORCORAN

DATED AUGUST 1, 1975

A 217

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,

Plaintiffs,

-against- : AFFIDAVIT

MALCOLM WILSON, et al., : 75 Civ. 4500 (KTD)

Defendants. :

STATE OF NEW YORK )
: SS.:
COUNTY OF NEW YORK)

JAMES P. CORCORAN, ESQ., being duly sworn, deposes and says:

1. I am an Assistant Attorney General of the State of New York and represent Governor Hugh L. Carey (successor to former Governor Malcolm Wilson), James Melton (successor to Arnold R. Fisher), Commissioner of Motor Vehicles, Ogden Reid (successor to James L. Biggane), Commissioner of Environmental Conservation, and the State of New York, some of the defendants in this action. I make this affidavit in accordance with the Court's request to state the position of these defendants with respect to plaintiff's application for a preliminary injunction restraining defendants from increasing the transit fare in New York City.

- 2. The State of New York is charged under the Federal Clean Air Act Amendments of 1970 (42 U.S.C. § 1857 et seq.) (the "Act") with the responsibility of achieving full compliance with national ambient air quality standards. Both Governor Carey and Commissioner Reid have on several occasions stated their aim to achieve full and prompt compliance with the Act in the City of New York and elsewhere in the State. The State will exercise its full enforcement responsibility under the Act to insure State-wide compliance, including the City of New York.
- 3. The State of New York, acting through Commissioner Reid, has negotiated enforcement orders with the United States Environmental Protection Agency ("USEPA") relating to eight strategies under the Federally approved Transportation Control Plan for the New York Metropolitan Area. These orders were issued on April 28, 1975 by USEPA Regional Administrator Gerald Hansler pursuant to Section 113 of the Act. Governor Carey has consented in writing to the issuance of each of these orders, and the State is committed to fulfilling its obligations thereunder fully and promptly.
- 4. Orders relating to four additional strategies (bridge tolls, parking reduction, taxi cruising and after hours goods delivery) are currently under negotiation with officials of USEPA and the City of New York. Agreement has been reached on two of these orders, taxi cruising and after hours goods delivery, with the expectation that these orders will be issued shortly. These two strategies, once implemented, will, together with those previously agreed upon, make substantial progress

toward achieving the reductions required for carbon monoxide under the Transportation Control Plan.

- 5. The City of New York is in a fiscal crisis and the State recognizes the need for the City to secure additional sources of revenue as quickly as possible. A fare increase is one available source of revenue which will reduce the amount of subsidy the City would otherwise have to provide.
- in the transit fare will likely cause significant losses of mass transit ridership and an increase in vehicular traffic in the Manhattan central business districts, to the detriment of air quality in that area. A fare increase of \$.15 will cause a loss of average daily ridership of approximately 10% based on historical data contained in a study prepared by the New York State Department of Transportation in February 1975 (Public Transportation Operating Assistance: Evaluation and Options). The Metropolitan Transit Authority estimates a loss of from four percent to six percent.
- 7. When the amount of deterioration of air quality from the \$.15 fare increase can be projected with greater certainty utilizing the techniques of measurement of vehicle miles traveled contained in the approved Transportation Control Plan, the State will be in a better position to assess what additional measures need to be undertaken to achieve national ambient air quality standards. If analysis of the effects of the fare increase indicate to the State and USEPA that

achievement of the goals of the Transportation Control Plan will be frustrated, a plan revision under Section 110(a)(2)(L)(ii) of the Act would be appropriate. Such a revision would include an updated emissions inventory and additional or alternative strategies, if necessary to alleviate any effects of the fare increase.

8. The State will continue to negotiate promptly with USEPA on the two remaining strategies and stands ready to implement all orders issued or to be issued upon Section 113 of the Act unless and until such orders or the Transportation Control Plan are modified or revised in accordance with law.

Negotiation of the two remaining strategies, comprehending current developments, should bring the State and the City into full compliance with the Act. Should subsequent monitoring indicate the need for additional steps, including plan revision, the State stands ready to negotiate these expeditiously and to enforce any additional compliance required.

WHEREFORE, the relief sought by plaintiffs in the Order to Show Cause should not be granted because means exist under the Act to correct any deterioration of air quality caused by a fare increase.

JAMES P. CORCORAN

Sworn to before me this 1st day of August, 1975

Assistant Attorney General of the State of New York

LETTER OF ANNE SIDAMON-ERISTOFF DATED AUGUST 1, 1975

United States Department of Justic.

ADDRESS MEPLT TO UNITED STATES ATTORNEY... AND REPER T... INITIALS AND NUMBER TO

ASE:am

UNITED STATES ATTORNEY SOUTHERN DISTRICT OF NEW YORK UNITED STATES COURTHOUSE FOLEY SQUARE NEW YORK, N. Y. 10007

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August 1, 1975

The Honorable Kevin T. Duffy United States District Judge Southern District of New York Federal Courthouse Foley Square Yew York, New York 10007

> Friends of the Earth, et al. v. Wilson, et al., USDC, SDNY 74 Civ. 4500

Dear Judge Duffy:

It is my understanding that you have advised the parties to the above suit to obtain the comment, if any, of the U.S. Environmental Protection Agency, Region II, concerning the proposal to raise the New York City Transit fares and its possible impact on the goals of the Clean Air Transportation Control Plan.

The parties have, as requested, asked for EPA's comments, and 1 am authorized by Gerald M. Hansler, Regional Administrator, to file with Your Honor the enclosed copy of his letter dated August 1, 1975 which sets forth the views of EPA Region II on the subject.

Very truly yours,

PAUL J. CURRAN United States Attorney

ANNE SIDAMON-ERISTOFF Assistant United States Attorney Chief, Environmental Protection Unit

relephone: (212) 791-1958

Enclusure

ASE:am

Honorable Kevin T. Duffy

-2-

August 1, 975

cc: Gerald M. Hansler, P.E.

Regional Administrator
U.S. Environmental Protection Agency

Region II

26 Federal Plaza

New York, New York 10007

# LETTER OF GERALD M. HANSLER, REGIONAL ADMINISTRATOR, EPA, REGION II DATED AUGUST 4, 1975





### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

224

AUG 1 1975

Anne Eristoff, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
Federal Court House Annex
1 St. Andrew's Plaza
New York, New York 10007

Re: Friends of the Earth, et al. v. Wilson, et al., USDC, SDNY 74 CIV 4500

Dear Ms. Eristoff:

We have been informed that at a hearing on a motion in the above case on July 30, 1975 Judge Duffy requested the parties to advise the U.S. Environmental Protection Agency (EPA) that he desired an expression of opinion by EPA on one of the issues involved in the motion, the proposed increase of the \$.35 fare on New York City Transit Authority subways and buses.

It apparently is petitioners' position that a continuance of the status quo with respect to the transit fare is necessary in order for the goals of the TCP to be achieved. The TCP discusses various means for encouraging greature of mass transit facilities. It recognizes that the level of fine charged for mass transit affects the extent to which the riding public makes use of these transit facilities. However, the TCP does not contain any express requirement that fares be continued at their present levels.

EFA, too, is seriously concerned that the proposed fare increase, to \$.50 or \$.60, as has been discussed in the news media, will have a counter-productive effect in achieving the goals of the TCP. Although definitive statistics are not available, it is EPA's opinion that the contemplated fare increase will induce more subway and bus passengers to use their cars to go to and from work, with a resulting increase in air pollution. (See Attachment 1.) It will thus detrimentally affect the public health and welfare of people living and working in the entire metropolitan New York area.

EPA is certainly aware that the fare increase is one of many steps being considered by the City of New York in its efforts to remedy the present critical financial state. However, measures are available which would help restore the City's fiscal position without unreasonably penalizing area residents by exposing them to violations of national health-related ambient air quality standards. For example, B-7, one of the strategies of the TCP for which Notices of Violation were issued to the State and City of New York in January, 1975, requires the imposition of tolls on the East and Harlem River Bridge crossings. This measure would have three beneficial results:

- (1) It would reduce the use of scarce fuel;
- (2) It would provide cleaner air; and
- (3) By encouraging use of car pools, it would avoid unnecessarily heavy costs to the single-passenger commuter.

The imposition of tolls on the East and Harlem River Bridge crossings, paralleling the tolls on the Hudson River crossings from New Jersey, would produce additional revenues while being in harmony with the goals of the TCP. It would avoid the unfavorable environmental consequences of a subway and bus fare increase and at the same time help restore the City's fiscal position.

As an example, the May 5, 1975 toll increase, instituted by the Port Authority of New York and New Jersey, on the Hudson River crossings has resulted in the decreased use of automobiles for commutation and increased carpooling at the same time that revenues were increased. A comparison of daily tunnel traffic for the Lincoln and Holland Tunnels by the Port Authority shows a 3 1/2% decrease in June, 1975 from the daily tunnel traffic measured in June, 1974. Further, more than 6,000 monthly carpool commuter tickets were sold in the first two months following the toll increase. It seems clear, then, that a vell-structured toll program c n contribute to cleaner air by discouraging automobile use while increasing revenues.

If the present \$.35 fare is increased, and if analysis shows that the attainment and maintenance of national ambient air quality standards intended to be implemented by the TCP will therefore be jeopardized, a revision of the TCP will be required pursuant to Section 110 of the Clean Air Act, as amended, 42 U.S.C. §1857c-5. To the extent that it could be practicable or feasible, EPA would require more effective pollution control measures based upon an expanded application of existing strategies of or the inclusion of additional strategies to the TCP. There are, however, statutorily-mandated deadlines for attainment of national standards which would further limit the availability of these new measures.

Since we are of the opinion that additional revenues can be brought into the City's coffers through measures which have favorable environmental consequences and are required by the present TCP, we urge that such measures be considered as responsible alternatives to the fare increase proposal.

To reiterate, we believe that an increase in fares on New York City Transit Authority subways and buses will detrimentally affect the public health and welfare and that other measures are available, and required by the present TCP, which would avoid this harmful result.

Sincerely yours,

M. M. Hansler

Gerald M. Hansler, P.E. Regional Administrator

#### Enclosure

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cc: David Schoenbrod, Esq.
Natural Resources Defense Council, Inc.

David G. Hawkins, Esq. Natural Resources Defense Council, Inc.

Adrian P. Burke, Esq.
Corporation Counsel for the City of New York
Attn: Alexander Gigante, Jr., Esq.

Louis J. Lefkowitz, Esq.
Attorney General of the State of New York
Attn: James P. Corcoran, Esq.

# ESTIMATED IMPACT OF TRANSIT FARE INCREASE FROM 35 TO 50 CENTS IN NEW YORK CITY

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (1975)

Based upon past evidence,\* qualified by higher gasoline prices and other economic constraints, it can be reasonably assumed that an increase of 15 cents (43%) in the transit fare will result in a reduction of transit ridership by 10%. Therefore, of the 6 million daily two-way trips made by transit in New York City, about 600,000 will be induced to seek alternative modes of travel.

A conservative estimate of the proportion of these trips which will be for the purpose of daily work is 20%. Therefore, 120,000 of these diverted riders will definitely be seeking other transportation modes to get to and from work. The other 80%, which includes persons coming to the City for purposes of recreation, visiting or shoring, may not make the trip.

The express bus network in New York City presently operates at capacity, and therefore has little hope of absorbing many of the diverted subway ridership. A reasonable assumption based upon the diversion which occurred pursuant to the 1972 fare increase from 30 to 35 cents, is that only about 6,000 of the diverted subway and bus ridership who must have alternate transportation could be accommodated by the express bus system, without substantial expansion of express bus operations. Therefore, 114,000 trips will be completed by the only other available means, private auto.

Historically, New York City residents and commuters have shown little inclination to carpool. Therefore, it is not unreasonable to assume that the average occupancy of vehicles used by these diverted riders will be 1.2 persons (per vehicle). Thus, it is estimated that 95,000 additional vehicles will enter Manhattan each weekday as a result of the fare increase.

\*See "Public Transportation Operating Assistance: Evaluation and Options," p. 28, published 1975 by New York State Department of Transportation and New York City Transit Record, LIII, 2, Feb. 1973, p. 11.

This traffic may be conservatively distributed throughout the day by assuming that 25% of it impacts the peak commuter hours of 7 to 10 AM. During the period of highest ambient air standard violations, then, some 24,000 additional vehicles will be traveling to and from Manhattan, generating (at 10 miles per trip) 240,000 daily vehicle miles traveled and contributing substantially to pollution control problems which presently plague New York City and environs. In addition to this, the other 75% of the work trips, which will be made at off-peak hours, will generate 710,000 vehicle miles traveled over the course of each average work day. This will undoubtedly exacerbate already severe violations of the 8-hour national ambient air quality standard for carbon monoxide in Manhattan south of 60th Street.

# PLAINTIFFS NOTICE OF MOTION FOR SUMMARY JUDIMENT DATED AUGUST 4, 1975

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

A 229

FRIENDS OF THE EARTH, et al.,

Plaintiffs,

74 CIV. 4500 (KTD)

-against-

NOTICE AND MOTION FOR SUMMARY JUDGMENT

HUGH CAREY, et al.,

Defendants.

SIRS:

PLEASE TAKE NOTICE that printiffs will move this Court on the 15th day of August, 1975 at 10:00 a.m. in Room 1506 of the United States Court House, Foley Square, New York, New York, or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting plaintiffs summary judgment with respect to four strategies contained in the Transportation Control Plan, to wit strategy B-1c (partial ban on taxi cruising); strategy B-3 (reduction in Manhattan central business district parking); strategy B-7 (imposition of tolls on all East and Harlem River Bridges); and strategy D-3 (after-hours deliveries to stores and office buildings), on the ground that there is no genuine issue as to any material fact with respect to violations of said strategies and that plaintiffs are entitled to a judgment as a matter of law.

Plaintiffs' motion is based upon notices of violation issued by the federal EPA with respect to the said strategies; admissions by defendants that no federal EPA enforcement orders have yet been issued with respect to the said strategies (Corcoran Affidavit, August 1, 1975; Gigante Affidavit, July 30, 1975); the Affidavit of David Schoenbrod, July 28, 1975, the Affidavit

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of Ross Sandler, July 30, 1975, and the Affidavit of Brian T.

Ketcham, dated July 28, 1975 pages 10-11, all filed in support
of plaintiffs' motion for preliminary relief sought by Order to

Show Cause dated July 28, 1975; the statement detailing defendants'
violations found in Plaintiffs Supplemental Memorandum in Support
of Plaintiffs Initial Motion for Preliminary Injunction dated

November 8, 1974 at pages 14-15, 17, 19-20; the Complaint
herein and all papers heretofore had herein.

Respectfully submitted,

ROSS SANDLER DAVID SCHOENBROD

Attorneys for Plaintiffs (Natural Resources Defense Council) 15 West 44 Street New York, NY 10036 (212) 869-0150

DATED: New York, New York August 4, 1975

# PLAINTIFFS' STATEMENT PURSUANT TO GENERAL RUIT 9(g) IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT DATED AUGUST 20, 1975

231

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FRIENDS OF THE EARTH, et al.,

Plaintiffs,

-against-

74 CIV. 4500 (KTD)

HUGH CAREY, et al.,

Defendants.

PLAINTIFFS' STATEMENT PURSUANT TO GENERAL RULE 9(g) IN &UPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

- 1. Jurisdiction of this Court is properly invoked pursuant to Section 304(a)(1) of the Clean Air Act. 42 U.S.C. \$1857h-2(a)(1).
- 2. Plaintiffs' letter sent by certified mail on August 6, 1974 to the defendants herein constituted proper notice pursuant to Section 304(b) of the Act. 42 U.S.C. §1857h-2(b); 40 C.F.R. 54.
- 3. Venue is properly lodged with this Court pursuant to the provisions of \$304(c)(1) of the Clean Air Act. 42 U.S.C. \$1857h-2(c)(1).
- 4. Plaintiffs Friends of the Earth, Friends of the
  Earth, New York Chapter, Natural Resources Defense Council, Inc.,
  Sierra Club, Citizens for a Better New York, Citizens for Clean
  Air, Committee for Better Transit, Environmental Action Coalition,
  Harlem Valley Transportation Association, Institute for Public

with the second of the second of the second of the second of the second of the second of the second of

Transportation, NYC Clean Air Campaign, New York State Transportation Council, North East Transportation Coalition, West Village Committee, David Sive and Paul DuBrul, are each of them proper plaintiffs to bring an action pursuant to Section 304 of the Clean Air Act. 42 U.S.C. §1857h-2.

- 5. Defendants Hugh Care/, Abraham Beame, David L. Yunich, Michael J. Cobb, Alfred Eisenpreis, Moses L. Kove, Elinor Guggenheimer, Robert A. Low, Michael Lazar, John Zuccotti, Morris Tarshis, Paul O'Dwyer, J. Douglas Carroll, Jr., William J. Ronan, Theodore Karagheuzoff, James Melton, and Ogden Reid, hold the positions as set forth in paragraphs "11" through "27" of the Amended Complaint and each, in his respective capacity, is responsible for carrying out measures required by the New York City Metropolitan Air Quality Region Transportation Control Plan").
- 6. Defendant State of New York is the governmental entity responsible for carrying out each of the measures required by the Transportation Control Plan.
- 7. Defendant City of New York is the governmental entity which shares responsibility with the State of New York for carrying out the measures required by the Transportation Control Plan.
- 8. The Transportation Control Plan, submitted by the State of New York and the City of New York, was approved by the EPA Administrator on June 22, 1973, 38 F.R. 16560-61, pursuant to the Clean Air Act. 42 U.S.C. 51857c-5.
- 9. Included within the Transportation Control Plan were required strategies which, among others, included the following:

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Strategy B-1C -Selective Ban on Taxi
Cruising

Strategy B-3 -Reduction in Manhattan
Central Business District
Parking

Strategy B-7 -Tolls on all East and Harlem River bridges

Strategy D-3 -After-hours Delivery to Stores and Office Buildings.

- 10. With respect to each said strategy, the defendants have failed to timely complete required actions to or implement said strategies as set forth in the annexed schedule.
- 11. The New York City Metropolitan Air Quality Region is now and has been at all times since June 23, 1973 in violation of the National Primary Ambient Air Quality Standards for Carbon Monoxide, Photochemical Oxidants and Nitrogen Dioxides.
- 12. Carbon Dioxide pollution throughout New York City has in fact substantially worsened since adoption of the Transportation Control Plan according to air quality information collected by New York City.

Respectfully submitted,

Ross Sandler David Schoenbrod

Attorneys for Plaintiffs (Natural Resources Defense Council) 15 West 44 Street

New York, New York 10036 (212) 869-0150

Dated: New York, N.Y. August 20, 1975

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<sup>9.</sup> Evaluate impact (theoretical prior to ban; measure impact, after implementation).

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ORIGINAL PLAN SCHEDULE

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Feb. 15, '73

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		Her York City Police Department, the Traffic Departmen	1	the New York City Bureau of Consumer Affairs stating agr	cn the need for
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- 3. Secure funds (\$1.5 million) for the development of both CBD and City-wide parking policies.
- i. Develop and adopt a CBD parking policy and establish an agreement with the taxi industry to establish jitney sarvice between Hudson waterfront fringe parking lots and centers of businesses.
- 5. Develop a City-wide parking policy.
- Ssoure funds (approximately \$15 million) for implementation of both CBD and City-wide parking policies.
- or para-professional staff (Ref. Strategy B-lA).
- Select off-street parking facilities to be eliminated.
- 9. Furchase and close down selected off-street parking facilities (may require City c State legislation to accomplish). Jitney services in operation.
- . Evaluate impact of program (requires traffic counts at key issations before and after implementation).
- . Secure funds for implementation of City-wide policy.
- . Implement city-wide policy.

June 1,'73 Aug. 1,'73 Aug. 1,'73 Nov. 1,'74 Nov. 1,'73 Feb. 1,'74 Nov. 1,'73 Feb. 1,'74 Feb. 1,'74 Jan. 1,'75 Apr. 1,'75 Jan. 1,'76 July 1,'74 Ongoing		,'73 No action taken	'73 Incomplete	'74 No action taken	,'73 No action taken	No action taxen	'74 No action taken	'75 No action taken	76 Not required til	'74 No action taken	No action taken	
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- Prepare detailed study and implementation work plan.
- Secure all necessary agreements.
- . Secure all necessary study and design funds.
- 5. Prepare alternative traffic plans for borough of Manhattan (see Strategy 3-18).
- 5. Secure funds (\$10 million) to design and install toll booths.
- . Investigate bridge and tunnel activity and related local air pollution prior to implementing tolls and after implementation. Evaluate impact.
- . Modify bridge facilities.
- 9. Implement bridge tolls.

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PLAN SCHEDULE	July 1,'73	Jan. 1,'74 Incompl.
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STATUS	Incomplete	. Incomplete	Incomplete	Incomplete	No action taken	Not required til	Not required til
COMPLETE	Apr. 15, 73	Jan. 1,'74	Mar. 1,'74	Jan. 1,'75	Mar. 1,'75	Jan. 1,'76	Apr. 1,'76
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ORIGINAL PLAN SCHEDULE	Feb. 15, 73	oct. 1,'73	Jan. 1,'74	Mar.,1,'74	Dec. 1,'74	Mar. 1,'75	Jan. 1,'76
WATER D-3: After-Hours Delivery to Stores and Office Buildings	Secure Mention and the form the Mayor's Office, transporter of the police of the formal of the forma	Prepare a detailed study work plan.	all necessary and the for study		MACON GOOD TO THE STATE OF THE	emonstration.	

++ Strategy D-3 was elevated from a maintenance strategy to a primary strategy by the State on April 17, 1973, but a modified schedule for implementation was never submitted. As a primary strategy implementation must occur as expeditiously as practicable.

The Hon. Kevin Thomas Duffy
U. S. District Court Judge for the
Southern District of New York
U. S. Court House
Foley Square
New York, New York 10007

Re: Friends of the Earth, et al. v. Hugh Carey, et al. 74 Civ. 4500 (KTD)

Dear Judge Duffy:

As President of the Authority for Coordinating Transportation, Inc., I request the opportunity to be heard on the pending motion for a preliminary injunction against an increase in transit fares. In the event you grant such a hearing, I respectfully request, for the reasons stated below, that defendants Governor Hugh Carey, Mayor Abraham Beame, and Metropolitan Transportation Authority Chairman David Yunich be required to appear and show cause why they cannot comply with the Clean Air Act and the program adopted pursuant thereto and to maintain the fare at 35 cents in order to prevent further violations thereof.

Since the motion is <u>sub judice</u>, I make this request in the present form instead of moving to intervene under section 304(a) of the Clean Air Act.

The Authority for Coordinating Transportation, Inc. is a not-for-profit organization which seeks to promote coordinated planning for all forms of transportation in the New York metropolitan area. Serious adverse economic and social consequences have flowed from the continuing failure to develop rational transportation planning. The failure to implement the Transportation Control Plan, which is the main subject of the pending litigation, is but one facet of the broader problem with which the Authority for Coordinating Transportation, Inc. is concerned.

The Hon. Kevin Thomas Duffy

August 14, 1975

I have reviewed the papers before this Court and, in my opinion, plaintiffs have made a compelling case for the issuance of a preliminary injunction against the fare increase under time-honored precepts of equity. The possibility of complying with such an order appears to me to be the main issue, but defendants never provide the bottom line of their claim.

The Transit Authority merely states the obvious; it will not have funds to meet its expenses unless it receives the money from either subsidies or a fare increase. The other defendants, to whom the Transit Authority must turn for subsidies, ignore the issue entirely. They wholly fail to allege facts which would support a finding that no other options are available to them to provide the needed subsidies. On this silent record, the Court would be fully warranted in ruling against the defendants and in granting the full measure of relief as sought by plaintiffs. Plaintiffs' Memorandum of Clarification dated August 5, 1975 at 6-7. The relief can take a form that prevents any impact on the City's fiscal problems. Ibid.

Defendants' claims of impossibility have remained as a ghost issue simply because it is possible to provide the Transit Authority with interim subsidies from the State and other sources. If there is any doubt as to this, the Court should convene a hearing at which defendants Beame, Carey, and Yunich should at least be required to establish that there is no practical way to meet their legal burden created by their violating the Clean Air Act.

At any such hearing, I respectfully request an opportunity to present the bases for my conclusion that defendants assuredly have within their power the ability to meet the financial needs of the Transit Authority without rescriing to a fare increase. It is important that answers and options vailable to the defendants be brought out now rather than a set September 1, 1975, when the fare has already been increased. Then it will be too late.

While the plaintiffs seek only a temporary bar to a fare increase, the granting of such relief would have a side effect of great importance to the public interest. It would provide an opportunity to reconsider a decision made in the midst of the City's fiscal crisis. Unlike the other measures taken, the fare increase is a revenue measure, not a measure to

The Hon. Kevin Thomas Duffy

August 14, 1975

increase the efficiency of the City. Moreover, it was a measure to raise funds for the Transit Authority, not the City. As a revenue measure, it was a poor choice. The fare increase is a regressive tax, falling most heavily on those who can least afford it, and the resulting lost ridership will inevitably depress revenues from the City's sales, real estate, and other taxes.

The fare increase was not an inevitable choice. The public officials have the option of paying for mass transportation by subsidies from other levels of government or through new sources of revenue authorized by the State, such as bridge tolls, special transportation taxes, or taxes designed to deter private vehicle use. It is the failure to seek out these very options that brings the defendants into conflict with the Clean Air Act.

The decision on the fare increase could and should have been made with full consideration of its widespread implications in a full public debate. I believe that there is a substantial chance that if the fare increase is halted temporarily, public officials will, of their own accord, conclude that there are other and better ways of providing the funds for mass transportation in the City of New York, which will not further perpetuate existing Clean Air Act violations.

Respectfully submitted,

Theodore W. Kheel

km

ce: James P. McMahon, Esq. 370 Jay Street Brooklyn, New York 11201

Alexander Gigante, Jr., Esq. Corporation Counsel's Office Municipal Building
New York, New York 10007

James P. Corcoran, Esq.
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Two World Trade Center
New York, New York 10047

Ross Sandler, Esq. V
David Schoenbrod, Esq.
(Natural Resources
Defense Council, Inc.)
15 West 44th Street
New York, N. Y. 10036

# LETTER OF STUART RIEDEL DATED AUGUST 15, 1975

New York City Transit Authority

370 Jay Street Broadlyn, New York 11201 Phone 212 300-3431

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David L. Yunion Charman and Cher Executive Officer

Lawrence R. Bailey
Leonard Braun
William L. Butcher
Donald H. Elifott
Justin N. Feldman
Harold L. Fisher
Mortimer J. Gleeson
Edwin G. Michaelian
Eben W. Pyne
Constantine Sidamon-Eristoif

Stuart Riedel

August 15, 1975

The Hon. Kevin T. Duffy
District Court Judge
U.S. District Court for the
Southern District of New York
U.S. Courthouse
Foley Square
New York, N. Y. 10007

Re: Friends of the Earth, et al., v. Carey, et al., 74 Civ. 4500 (KTD)

Dear Judge Duffy:

On August 14th, the New York City Transit Authority received an Amended Summons and Complaint in the above captioned matter. Since the Authority moved orally on July 30, 1975 before you to dismiss the original complaint and submitted memoranda of law in support thereof, the attorneys for the plaintiffs and the Authority have agreed that this letter shall constitute a motion to dismiss the amended complaint as to the New York City Transit Authority on the grounds previously presented to the court.

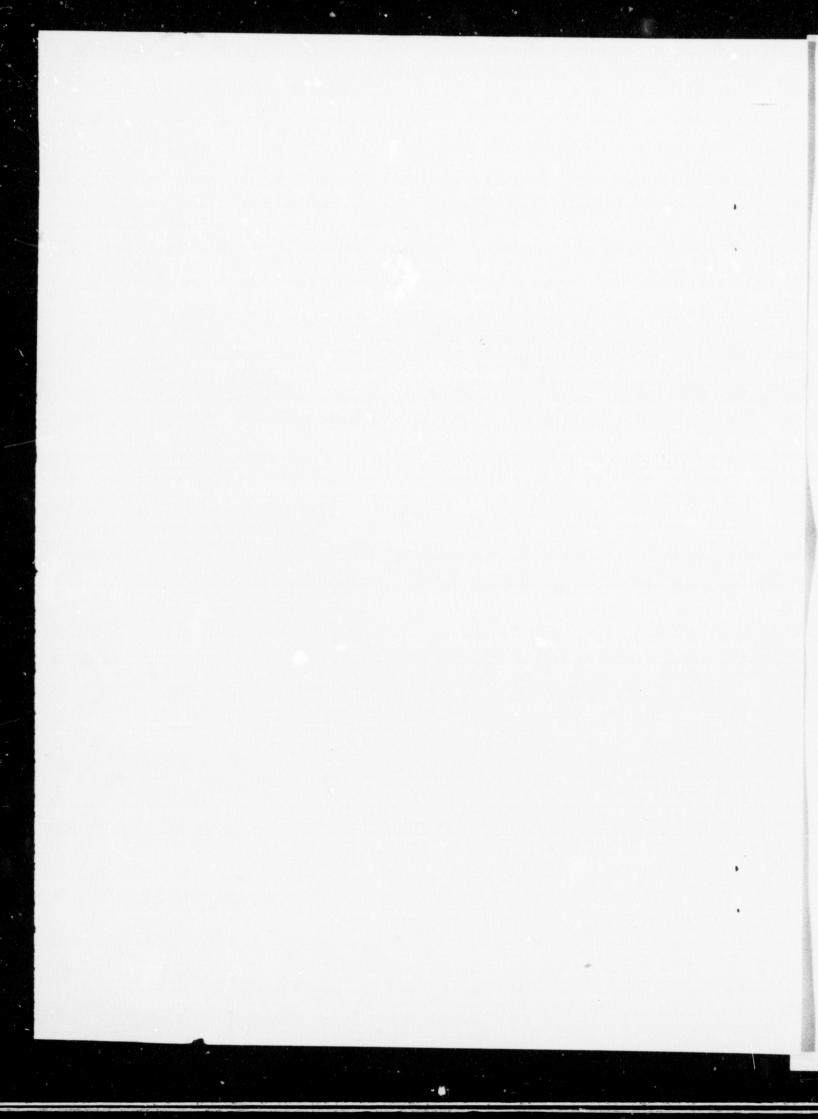
Corporation Counsel's Office

James P. Corcoran, Esq. Assistant Attorney General, State of New York

Devid Schoenbeed, Eaq. (Natural Resources Desense Couseil, Inc.) Sincerely

Stuart Riedel Attorney for New York City Transit Authority by

JAMES P. MONTHON



## AFFIDAVIT OF SERVICE BY MAIL

State of New York County of Kings

Stephen Zedalis
being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 47-19 194th Street Flushing, N.Y.
That on the day of November, 1975, deponen
served the within Appendix-Docket No.; 75-7497
upon Hon. Louis J. Lefkowitz, Attorney General of the State of New York 2 World Trade Center, New York, N.Y. 10047
Hon. W. Bernard Richland, Corporation Counsel
for the City of New York
Municipal Building, New York, N.Y. 10007
Stuart Riedel, Esq. General Counsel
New York City Transit Authority
370 Jay Street, Brooklyn, N.Y. 11201
Attorney(s) for the Respondents in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.  **Tephen Jeolalia**
sworn to before me,

This 10th \_day of \_

November

1975

Notary Public, State of New York
No. 24-3183500
Qualified in Kings County
Commission Expires March 30, 197